REAL ESTATE SETTLEMENT PROCEDURE ACT REGULATIONS: WORKING BEHIND CLOSED DOORS TO HURT SMALL BUSINESSES AND CONSUMERS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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CONTENTS

WITNESSES

APPENDIX

REAL ESTATE SETTLEMENT PROCEDURE ACT REGULATIONS: WORKING BEHIND CLOSED DOORS TO HURT SMALL BUSINESSES AND CONSUMERS

TUESDAY, JANUARY 6, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo [chair of the Committee] presiding.

Present: Representatives Manzullo and Bordallo.

Chairman MANZULLO. This hearing will come to order. Secretary Jackson is not here. I presume that he will be coming during the course of the testimony and we would start with—yes, sir?

Mr. WEICHER. Mr. Chairman, I am here on behalf of the Department of Housing and Urban Development as Acting Secretary Alphonso Jackson's designee as the person most familiar with the procedures and processes that the Department has followed in developing the rule.

Chairman MANZULLO. I appreciate your coming. However, it was Secretary Jackson that I wanted to testify. We will take your testimony and make that part of the record.

I would like the folks here with OIRA and HUD to stay through the entire hearing if possible—not Dr. Graham—but to stay through the entire hearing, if possible, so you can listen to the testimony of the small business people who will be testifying today. I ask that as a matter of courtesy and also as a matter of input.

This is the committee's second hearing on the Department of Housing and Urban Development's plan to modify regulations governing the real estate settlement process. I remain as concerned today about the process and procedures used to develop the final rule that was submitted to the Office of Information and Regulatory Affairs on December 16 between sessions of Congress of this past year for review as I was at the time of the committee's hearing in March of 2003. Nothing in the interim has given me any assurance that the Department has adequately addressed the concerns of small businesses.

Those invited to testify today, besides Secretary Jackson and Dr. Graham, represent those groups that are impacted by the Regulatory Flexibility Act, jurisdiction of which is held by the Small Business Committee.

On March 19, 2002, the President stated that "Every agency is required to analyze the impact of new regulations on small businesses before issuing them. That is an important law. The problem is, it is too often being ignored. The law is on the books; the regulators do not care that the law is on the books. From this day forward, they will care that the law is on the books. We want to enforce the law." that is the statement of the President of the United States.

Let me read that once more. On March 19, 2002, the President stated, "Every agency is required to analyze the impact of new regulations on small businesses before issuing them. That is an important law. The problem is, it is often being ignored. The law is on the books; the regulators do not care that the law is on the books. From this day forward, they will care that the law is on the books. We want to enforce the law." .

The President was talking about the Regulatory Flexibility Act, or the RFA. The statement was categorical and applied to all agencies. There was no exception to the Department of Housing and Urban Development or for regulations that are supposedly consumer-friendly.

Compliance with the RFA is not just another procedural barrier that agencies must hurdle prior to issuing a regulation. Instead, it provides the focal point around which rational rule-making must be conducted. This especially is true in the residential real estate industry, an industry consisting of hundreds of thousands of mainly small businesses. Without a proper analysis, HUD cannot assess whether the rule that it finalizes will be rational.

Since the hearing before this Committee in March of 2003, I sent two letters to the Department requesting a delay in finalizing any revised regulations until the Committee and affected industry have had the opportunity to review the final regulatory flexibility analysis. My requests were based on the fact that the Department's initial regulatory flexibility analysis was so flawed that this Committee could not be certain that any changes made by the Department would provide adequate compliance under the RFA. The Department provided no substantive response to this Committee.

This is the Committee that has jurisdiction over the Regulatory Flexibility Act. Such a cavalier attitude is simply unacceptable when the viability of thousands of small businesses is at stake. This is further demonstrated by the confirmed Deputy Secretary's, now Acting Secretary's, unwillingness to explain in person before this Committee why he sent the rule forward.

The Department of Housing and Urban Development is rushing to judgment. The marketplace has already responded. Hundreds of companies are offering packages of settlement services making full disclosures under Section 8. The Committee, consumer groups, the small businesses represented on the second panel today, and the largest lenders have all expressed concerns about a final rule that is substantially similar to the proposed rule.

In fact, I have a letter here from the Consumer Federation of America, Consumers Union, International Union, UAW, National Association of Consumer Advocates, the National Community Reinvestment Coalition, the National Consumer Law Center, U.S. Public Interest Research Groups, and the bottom of it says, "Because

of these concerns," and they are all laid out seriatim in a very nicely worded letter dated December 3, 15 days before the decision was made to send the final rule to OMB, stating, "While—in summary, while we strongly appreciate HUD's positive efforts, we nonetheless have several overreaching concerns about the proposed rule. Because of these concerns, we believe that it may be necessary for HUD to issue new proposed RESPA rules before any final regulatory action is taken." .

That is the same relief requested by the Office of Advocacy of the Small Business Administration. That is the same relief requested by the Chairman of the House Committee on Financial Services. He wanted a new proposed rule. That is the same relief requested by everybody, everybody concerned.

Everybody in America wants a new proposed rule, except HUD. They continue in their stubborn, obstinate ways to do things in their own way, with their own timing, ignoring and fulfilling the prophecy of President Bush that these agencies simply do not care about complying with the Regulatory Flexibility Act.

This is the Small Business Committee. We have jurisdiction over RFA. It is also in many cases the Committee of last resort, where the little people in this country come because they have no other forum.

[Chairman Manzullo's statement may be found in the appendix.]

Chairman MANZULLO. So, we will leave the chair there with the nameplate inviting Secretary Jackson at any time to join us. I know he is in town. I know he is available. He is a fine man. I have talked to him three or four times on the telephone. Any time he wants to join us, even into the second panel, he will be welcome to come.

I am thrilled that Dr. Graham from OIRA, OMB, has consented to come to today's hearing. He is an outstanding public servant. Whenever our office calls, whenever any office on Capitol Hill calls, we get an immediate response, a substantive letter, acting totally within compliance of the law by a man who has done an outstanding job in public service to this country, who has done more in helping small businesses with the memorandum of understanding executed between OIRA and the Office of Advocacy to give the small businesses still another opportunity to have input into the regulatory scheme of this country.

I called him 2 weeks ago and requested that he stop by. I believe it was the same afternoon, or the afternoon right after that, he stopped by the office, chatted for an hour, and, of course, under the rules, everything involved in that chat will be up on the Internet, and that is the way it should be, because of his openness and his respect for this body.

So, Dr. Graham, thank you for coming. We look forward to your testimony.

STATEMENT OF THE HONORABLE JOHN GRAHAM, Ph.D., OIRA, OFFICE OF MANAGEMENT AND BUDGET

Mr. GRAHAM. Thank you, Mr. Chairman. I am delighted to have the opportunity to be here this morning to discuss the Real Estate Settlement Procedures Act rule-making.

We have a draft—as you indicated, a draft final rule from the Department of Housing and Urban Development. It was submitted, as you indicated, to OMB on December 16, 2003. My testimony will be fairly brief and to the point because I am not permitted to discuss the substance of the rule or the status of our internal deliberations. I will just take a few moments to describe the nature of the process at OMB and then take whatever questions I can.

Under Executive Order 12866 we have a maximum of a 90-day review period for a rule of this sort. On rare occasions it would be extended longer than that at the request of the agency.

You might be interested to know something about how the OMB review process generally works. You mentioned at the outset, Mr. Chairman, that several of the OIRA staff are here today. They include the desk officer and the budget official who have responsibility for review of this package. They will examine the draft rule itself, the preamble to the draft rule, the regulatory impact analysis, the overall economic impact analysis for the rule, the regulatory flexibility analysis and the overall impact of the rule on small business, which I know is of deep concern to this Committee and you, Mr. Chairman.

They will also have access to the extensive public comments that were made in HUD's process on this rule, and they will have the benefit of reviews of other Federal agencies that have an interest in this rule-making.

As is laid out in Executive Order 12866, we have a process whereby interested members of the public can register their views with OMB on this particular rule-making. We have tried to adopt an open-door policy toward these meetings with outside parties. Any time we have a meeting with a member of the public interested in a particular rule-making, we are obliged to invite the affected agencies to attend, and I am delighted you have invited in this case the affected agency to attend this particular hearing.

These meetings with outside parties are logged, as you indicated, on OMB's Web site. You can learn the names of the individuals, their organizational affiliation, the date of the meeting and the topic of the meeting. We don't take minutes of those meetings in order to encourage candid discussion, but any written materials, data, and legal arguments that are laid out, are placed in the agency's docket and in OMB's docket, for public view.

In our discussion, as you mentioned we had a couple of weeks ago, you correctly indicated that OMB has a strong interest in this rule-making. As you know, we reviewed the draft package back in the spring and summer of 2002. In a concluding review of that package, before it went out for public comment, we issued a post-review letter laying out OMB's expectations on additional progress in developing the analytic support for this rule-making that we expected to be accomplished between the proposal and the final stage. That letter is publicly available on OMB's Web site.

In particular, that letter requested improvements in both the regulatory impact analysis and the regulatory flexibility analysis. My staff will be looking diligently at this package to see what progress HUD has made on these analytic issues and improvements in the rule itself, and we are certainly very open to the comments of members of this Committee and you as the Chairman. We

will be staying through the hearing to listen to the comments of the witnesses to make sure that all of the appropriate issues are addressed before final decisions are made on the rule-making.

Thank you very much, Mr. Chairman. I am delighted to be here.

[Dr. Graham's statement may be found in the appendix.]

[Additional material submitted for the record is retained in the Full Committee files]

Chairman MANZULLO. Thank you, Dr. Graham. In reference to that August 6 letter, Dr. Graham, on page 2, where you discuss economic analysis, did you just want to read that short paragraph there or do you want me to read it and you comment on it?

Mr. GRAHAM. Page 2, "Economic Analysis: HUD conducted an extensive analysis of the economic impacts of the proposal to inform policy decisions at the proposed rule stage. HUD should continue to make improvements to the analysis in order to inform final decisions. In doing so, HUD should analyze the various options under consideration and base its analysis on the most reasonable assumptions and data that meet HUD's new information quality standards, explaining the basis for several key assumptions rather than presenting them as illustrative statements. Furthermore, we would urge the Department to analyze more than one option so that HUD policy officials will be better able to select the option that maximizes net benefits as required by Executive Order 12866. My staff would be happy to work with you on the final economic analysis."

.

Chairman MANZULLO. Could you embellish on that, the best you can? This is talking about the old rule.

Mr. GRAHAM. This was the proposal issued in 2002.

[August 6, 2002 letter can be found in the appendix]

Chairman MANZULLO. That is correct, not the one that is under consideration now.

Mr. GRAHAM. Right. Well, maybe I could start by just providing a little context for the nature of a post-review letter. This type of letter was not commonly used under previous administrations, so let me give you some sense of context for it.

We basically have three options at OMB when we review a package like this. We can say the package is fine as it is and just simply approve it and let it go; or we can return the package to the agency and say, you have made some effort here but we don't think the effort is adequate. We think you ought to go to work on this some more and reconsider some of the issues.

This is really an intermediate kind of response. We did in fact allow the proposal to go forward for public comment. We felt the agency had done sufficient work to justify the public comment process, but we wanted to signal in a public and in an explicit way that we were expecting improvements in the analytic support of this package, and that is what this letter is designed to accomplish.

Chairman MANZULLO. The analysis, would it be both to the economic impact on small businesses under the RFA and also based upon giving some studies or anecdotal evidence that packaging in fact saves the consumers money? Was it to both of those?

Mr. GRAHAM. As I am just reading the material here, it is framed in a fairly general way. I don't think it gets into the specifics that you mentioned in your question.

Chairman MANZULLO. Okay. Both of those specifics are included in the RFA?

Mr. GRAHAM. Correct.

Chairman MANZULLO. Okay.

Doctor, would it be fair to ask you a question as to how long you expect the rule to take?

Mr. GRAHAM. It would be fair as long as you don't expect a precise answer. As you know, this is a very substantial rule-making with major economic impacts on a variety of sectors. The package itself, which I have seen, is a fairly sizable read; and we have it out to several agencies for review, as required.

It did not arrive until the 16th of December, and we have tried to have a few days for members of staff to have some time with family around the holidays and the New Year. So I have a feeling that it will be a little longer before we complete this review, but I can't give you a precise estimate.

Chairman MANZULLO. That is fair enough.

Under the rules, Members of Congress and affected parties are prohibited from examining this rule; is that correct?

Mr. GRAHAM. Yes. The materials that I mentioned are part of the deliberative process in the executive branch at this stage. But once we conclude our review and the rule is published, if it is published, then those materials will be placed in the public record so people can see all those materials.

Chairman MANZULLO. So the disadvantage that Members of Congress like myself would have, and also affected industries, is that if OMB proceeds immediately to publish the rule, it will be too late for us to examine the RFA.

Mr. GRAHAM. Well, just a little technical correction for the record. OMB won't be publishing it. We would be taking the package and providing it back to HUD with whatever response we had judged to be appropriate, and then HUD would make decisions based upon the OMB action.

Chairman MANZULLO. I think you answered this question in your testimony, but I believe you have stated that you have three options that you could do with the package presented to you.

Mr. GRAHAM. The proposed package.

Chairman MANZULLO. Could you explain those options once again?

Mr. GRAHAM. One is we could have—if we felt that the underlying analytic foundation of the package was too weak, we simply could have returned it to the agency for reconsideration. In this case they would have had to come back either with an additional proposed package or they could have decided, well, we will do something different. That is, in the term of art, a return for reconsideration.

A second option is, we could have said the package meets the requirements of the executive order; go ahead and publish it for comment.

The third option, which we have tried to use on various occasions in this administration, is to allow the package to go forward for comment, but to highlight in an explicit and a public way some areas where we would like to see improvements in the package;

and that is the decision that the professionals at OMB made on this particular package.

Chairman MANZULLO. Okay.

Mr. GRAHAM. Of course, a letter of this sort provides a vehicle not only for HUD, but all of the interested members of the public to focus on areas of concern. It increases the likelihood that additional data and argument and analysis would be generated in these various areas.

Chairman MANZULLO. So at this point you have an option. You could still send if back to HUD and say, we need more information, or you could proceed to final rule, allow them to proceed to final rule?

Mr. GRAHAM. That is right.

Chairman MANZULLO. The Congresswoman from Guam?

Ms. BORDALLO. I have no questions.

Chairman MANZULLO. Thank you.

Dr. Graham, thank you very much for your testimony. You are excused.

Mr. GRAHAM. Thank you, Mr. Chairman.

Chairman MANZULLO. I would like that letter of August 6, 2002, to be made part of the record. We have a copy of it here, Doctor. You can keep that if you like.

[The August 6, 2002 letter may be found in the appendix]

Chairman MANZULLO. If we could have our staff arrange for the second panel, I would like to still keep a spot open for Secretary Jackson as a matter of courtesy to be involved in these proceedings. Why don't you go ahead and set up the nameplates and have the rest of the witnesses take their places at the table?

Chairman MANZULLO. Okay, we are going to start the second panel with Marc Savit, who will be the first witness at the hearing. Neill Fendly could not make the hearing for family reasons.

Marc is the incoming Legislative and Government Affairs Chair for the Association. He is currently the Eastern Regional Vice Chair. He is the President of the Mortgage Center in Martinsburg, West Virginia, speaking on behalf of himself, his industry, and the National Association of Mortgage Brokers.

We are going to set a clock that is going to be 7 or 8 minutes, give or take 5 minutes on either side, whatever you want to do, just as a point of reference. We don't have to worry about the tyranny of the voting bells, so we have plenty of time to conduct this hearing. Go ahead and set that.

The complete written statements will be made part of the record. Any group or individual that wishes to supplement this record, you can do so. Here is the rule: It cannot exceed two pages in single-spaced elite type; no attachments; and use a reasonable margin, because I want to make sure we don't have a huge package that we have to have printed up.

Marc, we look forward to your testimony.

STATEMENT OF MARC SAVITT, ON BEHALF OF NEILL FENDLY, THE MORTGAGE CENTER FOR THE NATIONAL ASSOCIATION OF MORTGAGE BROKERS

Mr. SAVITT. Chairman Manzullo, members, thank you for inviting the National Association of Mortgage Brokers to testify on HUD's proposed RESPA rule.

Chairman MANZULLO. Could you pull that mike up just a little bit and talk into it a little more directly?

Thank you.

Mr. SAVITT. I am Marc Savitt, the current Eastern Regional Vice Chair for the National Association of Mortgage Brokers. I am also a full-time mortgage broker. As mentioned, unfortunately, Neill Fendly, who was scheduled to testify, will not be able to attend today.

Chairman Manzullo, I want to thank you for your leadership on this issue and this Committee for their interest in this issue as demonstrated by the hearing you held last March.

When NAMB testified at that hearing, we focused mainly on the proposal's disproportionate impact on small business, especially mortgage brokers, the negative impact on consumers, and we touched on HUD's failure to comply with the Regulatory Flexibility Act.

My testimony today focuses specifically on the regulatory process HUD used or failed to use in issuing their proposal and the lack of general fairness to an industry that contributes to over one-fifth of the U.S. economy.

As you know, HUD's proposal, which causes great concern for mortgage brokers, was issued in July of 2002 and is in the final rule stages. Unfortunately, for purposes of this hearing, NAMB cannot comment on the specifics of the final rule which is currently under review by the OMB. We do not know if significant changes have been made to the final rule sent to OMB; and as we and other interested parties were not afforded an opportunity to comment publicly on the final rule, instead of blindly guessing the contents of the final rule, NAMB can only comment on the facts.

We do know this so far. We know that HUD has received over 40,000 comment letters expressing grave concerns about the proposal. We know that NFIB, SBA, the FTC, the Congressional Hispanic Caucus, several Members of Congress and others wrote letters to HUD raising serious concerns about the rule; and finally, we know the proposal was the subject of five congressional hearings.

As a result of this, of these hearings and letters, many Members of Congress and interested parties requested that HUD issue a revised proposal. Given the significant number of concerns about the proposal which were raised and documented, NAMB is disappointed that we were not given an opportunity to review and comment on subsequent changes to the controversial proposal. HUD's decision to move to a final rule without public comment may call into the question the integrity of the process and may ultimately serve to harm consumers.

Today, mortgage brokers originate more than two out of three residential mortgage loans. If HUD's final rule mirrors its proposal,

mortgage brokers may lose their ability to assist in expanding the record number of American homeowners.

Today, I would like to focus on the facts, the procedure HUD used or did not use in issuing the proposed RESPA rule. HUD's request for comments on the RESPA proposal, issued on July 29 of 2002, includes 30 specific questions that would have been more appropriate as part of an advanced notice of proposed rule-making.

HUD has demonstrated on a few occasions its preference to pose questions to the public as part of an advanced notice. Asking 30 questions clearly indicates that HUD was investigating and conducting their research on the key components of a proposal that was in the early stages.

In the interest of consistency and in the interest of individuals, a fact affected by the proposal, NAMB believes HUD should have issued an advance notice as a first step in the RESPA rule-making process.

In addition, NAMB believes HUD did not comply with the Regulatory Flexibility Act, the Paperwork Reduction Act and Executive Order 12866 in developing their proposal. HUD's economic analysis, required under these laws, has major inconsistencies and inaccuracies which require further examination.

HUD's analysis does not provide a clear picture of the potential impact on the market, that is functioning effectively, nor does if accurately reflect the proposal's impact on small business. In fact, HUD's economic analysis is flawed, incomplete and inaccurate. Our testimony reflects in more detail these inaccuracies, but I will list just a few today.

For example, HUD significantly underreported the regulatory burden of its proposal to OMB. HUD's Paperwork Reduction Act submission to OMB states that annual responses for good faith estimates is 11 million. HUD's analysis states that if the rule were applied in the year 2002, it would impact 19.7 million applications. Thus, HUD's submission to OMB is inaccurate and unreliable as it underestimates the paperwork burden by at least 8.7 million good-faith estimates, or 44 percent.

As stated in HUD's OMB submission, the proposal would increase the burden on the industry by 2.5 million burden hours, which is equal to 289 years. HUD concedes this, but suggests it is a one-time transition cost for the industry, and yet calls this "burden deregulation." .

HUD's analysis states originators and closing agents will have to expend some minimal effort in explaining to consumers the difference between the streamlined good-faith estimate and the more detailed HUD–1. However, this cost is not included in the OMB submission and the cost is not minimal. This demonstrates that HUD's analysis is inaccurate and unreliable as it did not even consider this effort.

HUD claims that the proposal will lower closing costs for consumers by $700. However, HUD has not documented this savings nor explained the basis for the assumptions of the savings. HUD also did not provide documentation of how this alleged savings would be passed on to the consumer.

HUD's initial regulatory flexibility analysis, as required under the RFA, readily states that the small business community may

lose anywhere from 3.5 to 5.9 billion annually. However, HUD does not break down the costs in its analysis for each segment of the industry as required by RFA.

NAMB is very concerned that we don't know the contents of the final rule currently under review by the OMB. We can only hope it will not be substantially similar to the proposed rule. We believe HUD should have completed a more expansive and realistic review of the economic impact their proposal would have on small businesses by issuing a revised proposal, not a final rule. We can only hope the interests of home buyers and the small business industry that serves those home buyers will be protected by the final rule.

We appreciate the opportunity to share our concerns with you today. We hope the small business community will be protected against the extinction of small business in the mortgage industry as a result of HUD's proposal.

Thank you very much.

[Mr. Savitt's tesimony may be found in the appendix]

Chairman MANZULLO. Thank you for your testimony.

The next witness will be Stanley Friedlander, President and CEO of Continental Title Agency Corporation out of Cleveland, Ohio, on behalf of his company, and the American Land Title Association.

Mr. Friedlander, we appreciate your traveling from Cleveland to be with us this morning.

Mr. FRIEDLANDER. Thank you, Mr. Chairman.

Chairman MANZULLO. I am not going to set a clock, because it is not necessary, and I noticed that it made Marc a little bit nervous.

STATEMENT OF STANLEY B. FRIEDLANDER, CONTINENTAL TITLE AGENCY CORPORATION FOR THE AMERICAN LAND TITLE ASSOCIATION

Mr. FRIEDLANDER. My remarks are very short.

Mr. Chairman, my name is Stanley Friedlander, and I am the immediate Past President of the American Land Title Association and I am President of the Continental Title Agency of Cleveland, Ohio. Also with me today is Hank Shulruff, the Senior Vice President of Attorneys Title Guaranty Fund, Inc., of Chicago, Illinois.

Mr. Chairman, on behalf of the ALTA and its members, I thank you for holding this hearing. ALTA appreciates the opportunity to appear before the Committee to discuss the process by which HUD has undertaken revision of the Real Estate Settlement Procedures Act. Your leadership in examining the efforts of the proposed rule on small business has focused the rule-making process, and we hope the administration has heard your concerns.

ALTA filed comments on the proposed regulations, including comments on the effects on small business, in October of 2002. ALTA has consistently emphasized that the proposed regulations would radically alter the way business is done. We are particularly disappointed that HUD did not repropose the rule, given current economic conditions and marketplace developments.

Housing is currently the healthiest sector in the economy. It should not be put in jeopardy at the present time. Dramatic changes in the business relationships and service delivery system

on the real estate industry would occur if the rule were imposed as proposed.

Further, the marketplace has evolved to address the needs that HUD has cited as justification for its rule. For example, a Google search performed yesterday yielded 747,000 instances where guaranteed closing costs are offered. We have enclosed the first pages of that search.

Mr. FRIEDLANDER. Further, ALTA member companies have developed guaranteed closing packages that are already offered in the marketplace. A specific example of the package program is also included.

Mr. FRIEDLANDER. If a final rule is substantially similar to the proposed rule, ALTA has been directed by its board to institute litigation challenging the regulation. This would be particularly likely if, for example, a final rule contains an exemption to Section 8, the anti-kickback provision of RESPA. We specifically suggested in our original October 2002 comment that the agency repropose will rule.

The notice and comment rule-making process has resulted in essentially a monologue with HUD and numerous affected parties. HUD has received diametrically opposed advice from different groups and has felt unable to share any of its thinking. This lack of a give-and-take cannot result in the best possible rule. HUD has few professional staff who have actually worked in the real estate settlement services industry. Therefore, HUD should take advantage of the enormous expertise in the private sector and engage in a dialogue. Only then should they repropose a rule.

I would now like to review for the record our major concerns.

First, we believe that HUD has exceeded its statutory authority.

Second, the proposed rule will have a particularly onerous effect on small business settlement service providers. ALTA has developed an alternative two-package approach that attempts to ameliorate the above-mentioned effect on small businesses and guarantees the savings be passed on directly to the consumer.

Third, HUD's original proposal is not in the best interest of consumers. Consumers are concerned about the bottom line, but they need to be informed about what their package includes.

We did meet with HUD and OMB officials several times to express our concerns and explain our proposal. We hope that other Members of Congress follow the chairman's lead and realize the potential implications of this rule.

We would be happy to respond to questions.

[Mr. Friedlander's statement may be found in the appendix]

Chairman MANZULLO. You said there were 747,000. You meant—

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Mr. FRIEDLANDER.—747,000 responses to the one-hit question of guaranteed closing costs.

Chairman MANZULLO. I just want to let you correct your testimony. You said 747,000. That is what happens when you come to Washington, numbers get zeros added on to them.

Mr. FRIEDLANDER. The number is 747,000. The Google search performed yesterday, we had 747,000 hits where there are instances of guaranteed closing costs being offered.

Chairman MANZULLO. Across the Nation, what was reported on Google?

Mr. FRIEDLANDER. The item that was put into the Google search was guaranteed closing costs. The result was 747,000 hits on that question.

Chairman MANZULLO. Okay. I stand corrected.

Our next witness is Walter McDonald, Owner/Broker, Walter McDonald Real Estate, who came all the way from Riverside, California, and is the incoming President of the National Association of Realtors.

Thank you for making this trip all the way from California. We look forward to your testimony.

STATEMENT OF WALTER T. McDONALD, WALTER MCDONALD REAL ESTATE

Mr. MCDONALD. Good morning, Mr. Chairman, and members of the Committee. As was stated, my name is Walt McDonald, and I am the 2004 President of the National Association of Realtors. NAR is the largest trade association, representing almost 1 million members, who are individually involved in all aspects of the residential and commercial real estate industry.

First, let me say what has already been said time and time again, but I feel it is important to restate it here today: NAR supports efforts to improve RESPA and the home mortgage transaction experience for consumers. We admire former Secretary Martinez, his dedication to this initiative, and appreciate and support the stated goals of reform as set forth by the Department to simplify and improve the process of obtaining a home mortgage, and second, to reduce settlement costs for consumers.

However, as we have stated before and continue to believe, there are serious flaws with HUD's proposal, and unless significantly altered, it will not produce those desired results. In fact, it is possible that such a rule could create more of a problem than it intends to resolve.

The impact on small businesses will be especially damaging, since most real estate settlement service providers, such as real estate brokers, are precluded from offering packages. Further, given the obvious controversy and the lack of support from the industry, consumer groups and Congress, we feel it is important, now more than ever, that this rule not be finalized in its current form.

As you know, even those earlier supporters of HUD's proposal have expressed what we in the real estate business call "buyer's remorse" due to the uncertainty associated with the impact of this initiative, and we are now at this time, when all major players and consumers groups no longer support this rule.

It is our hope that OMB sends this rule back to HUD for additional analysis and review and instructs them, instead, to issue a revised proposal that provides for additional public comment. Otherwise, the changes contemplated by HUD will drastically change the real estate mortgage finance system.

Until there are assurances that these changes will result in benefit that far outweigh any potential negative consequences, a final rule should not be promulgated. There is too much at stake to rush quickly to judgment on issuing a change of such a magnitude that this rule contains.

HUD said it best, I think, in the supplementary information section of its July 28, 2002, proposed rule. They said the American mortgage finance system is justifiably the envy of the world. It has offered unparalleled financing opportunities under virtually all economic conditions to a very wide range of borrowers that, in no small part, have led to the highest homeownership rate in the Nation's history. I am confident the entire mortgage finance and settlement service industry would agree with HUD on that statement.

It is curious that despite this characterization of the current marketplace, HUD feels compelled to make such a radical change right now. Absent a real need for change, policymakers should not do anything to jeopardize the system that, despite its flaws, is still working well for most Americans.

We are here today because HUD chose to ignore the ever-growing opposition to its proposal and request for additional review. Needless to say, we are disappointed in HUD's decision to send their final rule to OMB in its final form, especially given our most recent submission to HUD, asking that they consider an alternative to the single-package guaranteed mortgage package.

When it became apparent that HUD was not going to back away from their GMP rule, our members looked for a viable alternative in an effort to minimize any potential harm to the industry and to consumers. As a result, in August of 2003, we submitted to Secretary Martinez a proposal that would replace the single-package GMP with a two-package disclosure system. We believe this proposal, while not perfect and certainly deserving additional analysis, better meets the goals of the GMP, without placing nonlenders at a disadvantage or harming the consumers.

A strictly defined two-package approach to reform can offer benefits to consumers by creating a business environment where anyone can package, thereby attracting the greatest number of competitors, and full disclosure is made to the borrower.

Many of the problems associated with the single GMP can be improved by a two-package system. By creating an environment that does not limit the players, consumers will have an additional choice in the marketplace and this competition possibly will lower costs. In addition, all services in both packages will be itemized and disclosed to the consumers, thus forcing packagers to compete not only on price, but on service as well.

We remain convinced that the kind of changes contemplated by HUD to the mortgage disclosure system require additional study, specifically, the need for alternative approaches to the GMP and its impact on the consumer, as well as on the industry.

Eventually the alternative proposal submitted by NAR requires additional scrutiny and debate as well. Unless there is real opportunity for providers other than lenders to offer packaged settlement services to consumers, the negative consequences of HUD's GMP initiative will far outweigh any potential benefit to the consumers.

Consumers and industry groups alike have raised many issues, both old and new, in the last year and a half. Comments submitted to HUD in 2002 may no longer reflect the current thinking of some of the industry. Even the marketplace has changed, and as was commented earlier, several lenders are currently offering guaranteed package services.

For these reasons, it is important, now more than ever, to revisit the HUD proposal and craft a new proposed rule based on these changes, seeking additional public comment.

I thank you, Mr. Chairman, for the opportunity to present these views of the National Association of Realtors, and I look forward to questions.

Chairman MANZULLO. Thank you very much for your testimony.

[Mr. McDonald's statement may be found in the appendix]

Chairman MANZULLO. Our next witness is R. Michael Menzies, is that correct—.

Mr. MENZIES. Yes, sir.

Chairman MANZULLO.—President and CEO of Easton Bancorp from Easton, Maryland. On behalf of his bank over there and the Independent Community Bankers, we look forward to your testimony.

STATEMENT OF R. MICHAEL S. MENZIES, SR., EASTON BANCORP, INC. FOR THE INDEPENDENT COMMUNITY BANKERS OF AMERICA

Mr. MENZIES. Thank you very much, Mr. Chairman. I wanted to thank the members of this panel for submitting most of my testimony already.

Chairman MANZULLO. That is okay. You can invite us over there for shrimp. There is a big issue going on.

Mr. MENZIES. As you know, Mr. Chairman, Easton, Maryland, is the goose capital of the world, so at this time of the year we are pretty much into the Canadian geese.

Chairman MANZULLO. I won't touch that one.

Mr. MENZIES. Mr. Chairman, and Committee members, thank you. It is an honor to represent the ICBA, Independent Community Bankers of America today, and our 4,600 members, and comment on the RESPA rule.

As you noted, Mr. Chairman, I am President and CEO of Easton Bank and Trust, a community bank in Easton, Maryland. Last year, we originated about $24 million in secondary market loans, and we hold about a $20 million portfolio of residential loans in the bank's portfolio. I am also honored to serve on ICBA Mortgage Corporation's board. The Mortgage Corporation is a company that helps small community banks or community banks access the secondary market.

We very much appreciate your calling this hearing during recess, and we share your concerns and the concerns of the panelists.

Chairman MANZULLO. If I could interrupt you, the reason we called this hearing during recess is that HUD submitted the rule during the recess. That was the reason.

We had sent them two letters. One in July anticipated an August surprise, that during the 5-week break where we could spend time with our families and constituents, they would submit a rule at that point. And then we sent another letter at the end of November anticipating a December surprise, that HUD would end up sending a rule over to OMB. So that is the reason why we are having this hearing between sessions.

Please proceed.

Mr. MENZIES. Very good. Thank you, sir.

As the other members of the panel have suggested, we will present testimony relative to the rule that has been submitted to OMB, because nobody knows what the final package is. If HUD significantly changed its proposal, the public should have another opportunity to comment on it before it is published as a final rule. It is likely to have a dramatic effect on the mortgage industry and how consumers seek mortgages and what they receive for their money.

HUD received, as was noted, tens of thousands of letters commenting on its proposal with divergent views from consumers and various industry segments, and the economic analysis has truly been criticized. The public and the industry should have an opportunity for additional comment to ensure the rule doesn't cause harm to consumers and small businesses and harm to a well-functioning mortgage market. If my memory serves me correctly, we cranked out over $3 trillion in mortgages last year. I am not sure we are dealing with a failed system.

We urge Congress to address our concerns about the rule during its 60-day review period.

A key component of the proposed rule is the introduction of the guaranteed mortgage package, GMP, which establishes a package of standardized settlement services and a mortgage loan with a guaranteed interest rate.

ICBA absolutely supports simplifying mortgage loan processing and giving borrowers more choice and lower costs. Unfortunately, we think the HUD proposal will not accomplish this goal, but instead deter customers from shopping for services that are stuck in a package. The mortgage loan process will become more confusing, reduce consumer choice and decrease consumer options for mortgage products, in my opinion, sir.

The guaranteed mortgage bundling looks very much to me like the HMO solution to health care. Providers will be asked to deliver mortgage solutions based on how cheap they can make the solution. Sometimes the cheapest appraisal or the cheapest title policy or the cheapest house inspection or termite certificate doesn't serve the consumer well. Borrowers deserve better disclosure in their mortgage package.

If free market aggregate pricing is the standard for settlement services, then where can the service providers expect to go with respect to their services? Obviously, they will be price-driven, not service-driven. They will seek to transfer costs and service and value out of their equation. The likely unintended consequences will be the payment for inferior services and support.

Let me advance also the notion of what happens when the lowest cost bidder is delivering the highest volume of appraisals and title policies for $3 trillion of mortgage loans that the GSEs issue, and how does that impact the GSEs and the integrity of the paper that they are issuing?

With regard to the good-faith estimate, the proposed rule calls for a more precise cost estimate than what is currently required. We believe the firmness of the cost estimate proposed by HUD does not adequately reflect the variances that legitimately occur in the industry. This will result in loan originators increasing the price of loans to all borrowers to guard against uncontrollable cost in-

creases. In my lifetime in business, uncertainty has always carried a cost which far exceeds certainty.

You have asked for comments about HUD's process and procedures in developing the rule. Based on what we have seen, we fear that HUD's proposal overlooks the adverse impact of the rule on small business and small lenders.

In its economic analysis accompanying the proposed rule, HUD simply states that it is difficult to reach a firm conclusion about the magnitude of the impact on small lenders, but acknowledges that a significant portion of the cost transfers related to the guaranteed closing cost package would be to their detriment.

HUD provides only a limited analysis of the effects on small business in general, yet HUD makes the unsupported assumption that these institutions are charging high prices for their services. Let me assure you, sir, in the little town of Easton, Maryland, we can lose a mortgage loan for $25 on an appraisal or a title policy or even a bug inspection. We have over 50 providers in our little town that can deliver to you a title solution, if you need it, in our community of 12,000 people. I don't know where the free market is failing to compete.

In conclusion, sir, and members of the Committee, ICBA places a very high value on the importance of homeownership. Our current mortgage finance system has enabled a record number of Americans to realize that dream, and we fully support the administration's goal to further increase minority ownership by 5.5 million families.

It is a simple fact that the lower the cost of obtaining the mortgage, the more affordable the house becomes, but we must be sure that the RESPA changes truly reflect the realities of the industry so as not to cause a serious disruption of the mortgage finance process and increase the cost of homeownership.

We strongly oppose the proposed rule because of the damage it will do to consumers, the mortgage finance system and the small loan originators and small settlement service providers that participate in it.

The rule will create an environment where the largest originators and settlement service providers drive out the smallest. The larger market participants have greater ability to negotiate volume discounts for services within the package than do smaller participants. The result will be less competition, less consumer choice and higher mortgage costs.

Mr. Chairman, we thank you for looking after the little guy.

[Mr. Menzies' statement may be found in the appendix]

Chairman MANZULLO. Just a short question. How many members are there in your organization?

Mr. MENZIES. About 4,600 community banks.

Chairman MANZULLO. These are little banks?

Mr. MENZIES. Yes, sir. I think we probably have a few billion-dollar-or-so banks within our organization. I believe our average size would be in the area of a couple of hundred million. But we have community banks that are as small as $10 million.

Chairman MANZULLO. How many employees do you have at your bank?

Mr. MENZIES. Forty-six full-time equivalent at Easton Bank & Trust.

Chairman MANZULLO. Thank you.

Our next witness is Regina Lowrie, Vice Chairwoman, Mortgage Bankers Association. She comes to us from Fort Washington, Pennsylvania, speaking on behalf of Gateway Funding Diversified Mortgage Corporation, and on behalf of the Mortgage Brokers Association. We look forward to your testimony.

Ms. LOWRIE. Mr. Chairman, that is the Mortgage Bankers Association.

Chairman MANZULLO. I will correct that for the record.

STATEMENT OF REGINA LOWRIE, GATEWAY FUNDING DIVERSIFIED MORTGAGE CORPORATION FOR THE MORTGAGE BROKERS ASSOCIATION

Ms. LOWRIE. Good morning, Mr. Chairman, and members of Committee. Thank you for inviting the Mortgage Bankers Association to discuss HUD's proposed changes to the RESPA regulations.

As you know, and as has been said here today, HUD is proposing the most fundamental legal reforms that the mortgage finance industry has ever seen. MBA has long supported reforming the laws dealing with the mortgage process and our position has not changed. We believe, however, there are fundamental issues at stake, and we stand firm in our appeal that HUD should repropose this rule to allow for more industry and consumer input. We commend you and your Committee for your attention to this matter, and we believe that mortgage reform is a process that deserves full congressional attention.

MBA has always held that RESPA is a crucial consumer protection statute in the area of mortgage lending. Although we believe that we should simplify the mortgage laws, we have at all times supported the necessity of protections afforded by RESPA.

MBA believes in RESPA's core objectives of ensuring that consumers are well informed and protected against improper steering and illegal referral fees. We fear that the regulatory changes recently finalized by HUD and now under review by OMB will largely dismantle the very important protections provided by Section 8 of RESPA. We understand that the rule submitted by HUD to OMB may contain exemptions from Section 8 that are so broad that they create massive loopholes which, in effect, legalize referral fee and kickback payments.

In addition, we think it is important to stress the immense impact that this rule-making will have on our industry. In a single stroke, HUD is altering the entire RESPA disclosure system. HUD is revising the good-faith estimate, the main shopping disclosure for consumers now under RESPA, and replacing it with a radically different form and new rules pertaining to liabilities.

This is not a small undertaking. By restructuring the good-faith estimate, HUD will alter every other RESPA disclosure that follows. The proposed rules then add a most dire penalty, in effect, a new right of recession for RESPA, for even technical deviations from the disclosed numbers.

The proposed rule shifts the market risk to lenders, and the infusion of new regulatory risk can only increase costs to consumers,

something which HUD's own economic analysis fails to contemplate. The regulations now being reviewed by OMB will force every single lender and broker in America in one single swoop to completely revamp their entire upfront disclosure systems. No exceptions, small entities included, timing rules, legal rules, and physical form requirements will all be altered. Unlike the packaging portion of the proposal, the proposed amendments to the GFE are not optional. Every single lender will have to comply. The changes required by these new rules will alone cost our industry millions upon millions of dollars to implement.

Mr. Chairman, HUD's intentions are laudable, but the effects of this rule may be debilitating to consumers and to our industry. No one wins by finalizing a rule that eliminates consumer protections; no one benefits by having a rule that severely hampers lending operations; and no one benefits with a rule that raises legal doubt and regulatory risk.

We believe that we can achieve our objectives through a very careful balancing of interests. It is critical that we not lose sight of the consumer. We must ensure that any new regulatory system maintains strong protections for mortgage shoppers and will stimulate consumer choice and market competition.

MBA reiterates its request to HUD to repropose the rule. The mortgage lending industry continues to serve as the basic pillar of our still very delicate economy. HUD's far-reaching proposals must avoid actions that impair the normal operations of this important sector of the economy.

Thank you for allowing us to testify here today. I welcome your questions.

Chairman MANZULLO. Thank you for your testimony and all the excellent testimony.

[Ms. Lowrie's statement may be found in the appendix]

Chairman MANZULLO. The name of this hearing is Real Estate Settlement Procedure Act Regulations: Working Behind Closed Doors to Hurt Small Businesses and Consumers. There is this secrecy that has been taking place.

I got into this because, in my life prior to Congress, I practiced law in a town of 3,500 people in Oregon, Illinois, and was involved in several hundred, if not as many as 1,000, real estate closings, representing the consumer.

Chairman MANZULLO. And that was commercial real estate, residential, agriculture. And when this issue first came on my radar screen—it was about a year and a half ago when Secretary Martinez, former Secretary Martinez, testified before the Committee on Financial Services, of which I am also a member—and at that time I took a look at this and I said, this does not make sense because there is obviously a small business component to this. And Congressman Mel Watt from North Carolina—who graduated from law school in 1970, same year I did, practiced law for 22 years, as I did, and was involved in several hundred real estate closings before his being elected to Congress in the 103rd Congress, we got elected together—expressed the same concern, that the process of going about the—measuring the impact on the affected parties—has been flawed.

Now, I do not know when there has been such a major change in real estate law. Perhaps when Jefferson tried to do away with primogeniture in the State of Virginia; he got a special exemption with regard to planning his estate. And in some cases, trying to do away with forced succession under the States in this country that adopted the Code Napoleon.

I do not know of anything that is as breathtaking in its approach to an industry that is not broken; I mean, you have all suggested sending this back.

My suggestion is to "deep six" this thing. How many man hours at HUD have been involved in this regulation? How many millions of dollars in taxpayers' money have been used to pay all these people at HUD to fix a problem that does not exist?

What better use of taxpayers' money could there be than to have it—than to propose a final rule, as to which every single group at this point is opposed, and that is because of the secrecy of it. All we know about it, as Dr. Graham testified, it is about this high.

Now, if you knew the size of the last one, if it was like this, then you know it is even more pervasive. If the last one was like this, then it is even less pervasive if they used lesser type. But as I examined this and examined the testimony of each of you prior to you coming here, I am just astonished that—and, Mr. Friedlander, you can help me on this.

In your written testimony, you attached a copy of a document that American Title had put out?

Mr. FRIEDLANDER. First American.

Chairman MANZULLO. First of all, explain what First American is.

Mr. FRIEDLANDER. Well, First American Title is one of the largest title insurance companies in the United States. I am an agent for First American.

Chairman MANZULLO. Independent agent.

Mr. FRIEDLANDER. Independent agent, and I am an agent for First American. This release is a first step in order to try to deliver to the marketplace a product that seems to be in demand.

It is not easy, and as was pointed out, the cost to implement this program is extremely high because of the computerization and the different ways settlements are done throughout the country. Not only throughout the country, but when you go outside the Beltway, things are a lot different.

And even in Ohio, in Ohio where I am from, business is done different in the central, in the north, and in the south. There are three different places where closings take place and you have to be adaptable to all three in order to do business in the entire State. So the idea of trying to propose a packaging system that would cover the whole country is an awesome task, and First American has made the first steps in this pilot program to provide this service, and I think it is going to catch on.

Chairman MANZULLO. Well, this would be a service to bring together, let's see, credit reporting, flood zone determination, property evaluation, title insurance and closing services.

It would not offer a fixed closing rate; is that correct? Fixed interest rate?

Mr. FRIEDLANDER. That is correct. Only a lender can offer a lender's rate, and this was one of our big concerns about the original proposal that HUD presented, is that it is strictly a lender product, because when you have to have a guaranteed interest rate, only a lender can do that. And that is why we were early in our two-package proposal, where you could have a lender package and then a consumer package, and one of the items that HUD did was a secret package, so that the consumer does not know what he is getting in the lender package, so he could be paying double for an appraisal, or he could not get what he thinks—.

Chairman MANZULLO. Or the lender could be getting a kickback.

Mr. FRIEDLANDER. The other aspect is the section 8 exemption. If there is an exemption to section 8, indeed the kickbacks will occur. We feel that we will be squeezed on our price and the price savings will not go to the consumer but will go to the packager.

In our proposal, there would be a total disclosure of what is in the package and any savings in price would go directly to the consumer, so there would be no kickbacks, no section 8.

Chairman MANZULLO. Okay.

Now, Mr. McDonald, you testified—or whoever on the panel—that there are already some companies that are offering packages; is that correct?

Mr. MCDONALD. Yes. Yes, sir, that is very true today. It has been true for some period of time but probably more so today. There are people that are offering packages without giving away the consumer protection that is provided in section 8.

Chairman MANZULLO. So in other words, the last proposed regulation—of course, we do not know what the new one does—would allow kickbacks, secrecy, and the ability to not outline or determine exactly what those services are; is that correct?

Mr. MCDONALD. It is one of our major arguments against the original proposal, that the thrust of their desire was to create more clarity in the transaction and to reduce cost, but yet their proposal says that you can allow a package to take place without disclosing what is in the package or who is providing it, what level of quality is involved in the package. So there is—.

Chairman MANZULLO. And also kickbacks?

Mr. MCDONALD. Yes. Well, there is far less clarity to the transaction, and then when you talk about cost savings, you have to understand that the packager puts the package together but does not tell what the cost of the individual components are or if there is a reduction in cost who gets that reduction in cost.

Our belief is that in all probability, that cost would not be passed on to the consumer, so we think the proposal is flawed in both objectives that it is trying to accomplish.

Chairman MANZULLO. Is not the original purpose—or was not the original purpose of RESPA to stop kickbacks and to stop lack of disclosure?

Mr. MCDONALD. Yes, sir.

Chairman MANZULLO. Anybody else want to comment on the—yes?

Ms. LOWRIE. Mr. Chairman, I think you bring up an excellent point, and that is one of the reasons why MBA is asking for HUD to repropose the rule.

I think that is one of the initial disparities between the initial proposed rule that came out in July of 2002 and what is found if you read in detail in the economic analysis, the fact that there is really no definition.

Anyone can package, and there is really no definition within that economic analysis on what services need to be performed in order to constitute a package. And then if you layer on top of that the safe harbor and the section 8 exemption, it opens the door to go back to where we were in 1974.

Chairman MANZULLO. How does this protect the consumer? Anybody?

Mr. MENZIES. I do not see any way it protects the consumer. I think the most important point is for us not to rush the thing through, and where is the compelling need to get this thing done when there is question as to who stands to benefit? Why not just, as you so eloquently put it, "deep six" it and/or bring it up for further analysis someday when there can be a real understanding of who really benefits from this. At best, it is suspicious.

Chairman MANZULLO. Anybody else want to comment?

In fact, there is a term that the industry has used for this section 8. It is called the black box. Does somebody want to comment on that?

Mr. MCDONALD. Well, I believe we are the guilty party there, Mr. Chairman.

We identified the original proposal as it being flawed in the service section of the proposal, would allow what we call the black box. It contained some services but did not identify what those services were or what the cost to those services was or who is providing them or the level or quality of service that would be contained in the package. And the requirement and the reason that original proposal—one of the things that bothered us so much was that it would reduce the amount of people that could provide those packages, because you had to have an interest rate guarantee, and only major lenders are able to provide that interest rate guarantee.

Without that interest rate guarantee, you really do not have much of a guarantee at all, and only—so you would reduce the number of people that could provide the packages, containing a black box of services that the consumer would not know what they were, so the whole purpose was to clarify and make the transaction more transparent and reduce costs, and we believe that it fails in both of those objectives.

Ms. LOWRIE. Mr. Chairman?

Chairman MANZULLO. Yes.

Ms. LOWRIE. To your point, does this benefit the consumer, I think that HUD's intentions were good in looking to simplify the mortgage process and create better disclosures for the consumer, but I think when you listen to all of the testimony here today, it does not really achieve that, the proposed rule as it was put out.

There are so many moving parts within that rule that it really must come back for reproposal and give the industry and the consumer groups an opportunity to evaluate all of those various components.

Chairman MANZULLO. Well, let me ask you a question. Why would you want to send it back when the system is not bro-

ken?Why would you want to give these bureaucrats more work and more time to do more mischief? So we could have more hearings that cost the taxpayers dollars?

Is there a problem now with real estate services vis-a-vis the consumer?

Ms. LOWRIE. I think, Mr. Chairman, if you were to talk to any number of consumers, especially over the last 2 years—and we have seen tremendous volumes and tremendous increases in home ownership—that the process is a very difficult, convoluted process. There is a lot of disclosure and itemization of—.

Chairman MANZULLO. The proper process.

Ms. LOWRIE. The present process, and I think improving—going through mortgage reform and improving that process for consumers, to make it simpler for them to understand.

You know, we say so many times in our industry, in the real estate finance industry, that we kill so many trees that there is an opportunity for us to look at simplifying the process.

Chairman MANZULLO. Let me stop you right there and go to Mr. Menzies.

In your written testimony, Mr. Menzies, you stated that at least the only rule that we know about would require community banks to post on an hourly basis the fluctuating interest rate for mortgages.

Do you recall that part of your written testimony?

Mr. MENZIES. Sure.

Chairman MANZULLO. Okay. Would you segue from what Mrs. Lowrie testified in that, in what an impossibility that is for small banks?

Mr. MENZIES. Well, I believe that there is not a problem, if you will, that must be corrected. I believe, as Regina states, there is an opportunity to seek not only simplification but reeducation.

I think the market is working well. We have a secondary market operation and we have rates available whenever you call, and you can get a quote from us or from at least 50 or 60 other mortgage lenders or mortgage brokers in our little tiny market. And, as a matter of fact, all of those mortgage lenders will monitor the secondary market and call you any day you want, to say that the 30-year fixed has hit 5–7/8 and whatever, and they are doing that right now to compete to win the business. So I personally do not perceive that there is a problem.

I do think there is an opportunity for simplification which should reduce costs, and I think there is always an opportunity for enhanced education.

Chairman MANZULLO. But do you need government to help you simplify this system?

Mr. MENZIES. Absolutely not.

Chairman MANZULLO. Anybody want to answer that?

Mr. FRIEDLANDER. Well, Mr. Chairman, as I mentioned in my testimony, this is taking place.

Chairman MANZULLO. In the free market system?

Mr. FRIEDLANDER. In the free market. And we certainly got some guidance from HUD that this packaging is something that we have to take serious and look at.

One of the issues, of course, with RESPA has been enforcement, and there have—HUD now has started a stronger enforcement of the rules, which is good.

In the past, there had been an inadequate number of people working on the enforcement part. So if we have the trend now in the free market to packaging and we have enforcement of the RESPA rules, I think that the market will take care of itself and not to fix problems that aren't broken.

Chairman MANZULLO. Mr. Savitt, with the mortgage brokers, would you—and then Mr. Menzies, you can join in, and anybody else—would you walk us through a typical real estate situation where you get a call from the buyer and then walk us through that real estate process?

Mr. SAVITT. You are talking about the origination process?

Chairman MANZULLO. Yes.

Mr. SAVITT. Usually what consumers will do is they will shop on the telephone before they come into your office.

Chairman MANZULLO. You find that going on, people shopping for rates, Mr. Menzies?

Mr. MENZIES. We find they come in with their Google search.

Chairman MANZULLO. Okay.

Mr. MENZIES. And about 8,000 pages of rates.

Chairman MANZULLO. Ms. Lowrie, same thing?

Ms. LOWRIE. Yes.

Chairman MANZULLO. Go ahead.

Mr. SAVITT. They do first shop on the telephone, and then after that they will want to know what the payment is based upon, what their loan amount has to be, how much they have to put down based on upon what their closing costs are.

We are a small company, only four people, a family-owned business, and we always estimate our closing costs in a worst-case situation because we do not know what will happen at the end. And, of course, things usually do change.

Chairman MANZULLO. And that could be the danger in the guaranteed package where you will always overestimate the cost; is that correct? Do you all agree with that?

Mr. SAVITT. Correct.

Chairman MANZULLO. Go ahead.

Mr. SAVITT. Even if someone tells us that they would be closing the last day of the month, which would reduce their closing costs because of the daily interest figure, we still estimate in a worst-case situation. You never know what can happen.

You can have a situation where a termite report will come back bad. There may be situations which will require additional time to close the loan. You do not want to have any surprises for the consumer so, of course, you always disclose in a worst-case situation—or should.

The consumer will then come into the office. We find that consumers are educated together. They have notes with them. They have questions that they asked. They want to know on specific closing costs, you know, what this might be for, and they are very savvy today.

We will take a loan application, we can explain the complete process to them. We explain our role to them as a mortgage broker,

that we are not actually making the loan, that we are originating the loan, we are processing the loan.We are working with a wholesale lender who will fund the loan and who they will ultimately be making their payments to.

We also set up the—with the closing agent, whether it is an attorney or a title company, who will be doing the real estate closing. We work with the termite people, the appraisers, the credit bureaus.

Chairman MANZULLO. So you help bring together these people?

Mr. SAVITT. Right. We do the entire process. We get the loan ready for closing. We submit the final package to the ultimate lender who will sign off on those conditions that will come back from Fannie Mae or Freddie Mac. And once the conditions are signed off, we receive closing instructions from the lender, which will go to the attorney's office. The loan is then closed and assigned at the closing table to the appropriate lender.

Mr. MENZIES. Mr. Chairman, I am not sure what happens to the integrity of this process when it is bundled. When a candidate comes in to borrow money, we walk them through the process and explain it as best we can what mortgage borrowing is all about, what they need to do to qualify. We give them a list of the appraisers who are on our approved appraisal list, maybe 20 or 30 of them. We give them a list.

Chairman MANZULLO. Certified. Certified appraisers.

Mr. MENZIES. Yes, sir; those who qualified for Freddie Mac and Fannie Mae appraisals, and we make sure they understand that it is important that they understand what is in the appraisal. We make sure that they understand the meaning of title insurance and that their relationship is with the title company, and when it comes to title insurance we are not giving them the title insurance, we are not guaranteeing their title.

We as a lender are expecting those professionals to do their job, to research the title, to determine if there are any encumbrances or flaws or problems with the title, and to insure them against that.

As is the case with the appraiser, we are expecting a certified, independent, credentialed individual to issue value, based upon studying the value of the property.

Chairman MANZULLO. Does that appear to be a problem with the consumer—.

Mr. MENZIES. No.

Chairman MANZULLO.—on picking the appraiser of their choice?

Mr. MENZIES. No.

Chairman MANZULLO. Has anybody ever complained to you that it is problematic, in making the largest purchase of their life, that they have to make half a dozen phone calls to different people?

Mr. MENZIES. No, it is not a problem. There is plenty of choice at present to pick an appraiser, to find a title company, to have a relationship with those two, and to have a meeting with those businesses, but the independence is of value.

I would argue that having an independent appraiser and an independent title company and an independent bank, not all wrapped together in one bundle, carries with it some value to the consumer.

Chairman MANZULLO. So your concern is that if you allow the bundling as HUD has obstensibly proposed, that this would hinder the independence of the people involved in the closing process and work to the detriment of the consumer?

Mr. MENZIES. When the top 50 lenders of the Nation who generate some huge percentage of that $3 trillion worth of paper, send a letter to 1,000 title companies and say if you want to play in the game this is what your price is going to be, and if you do not honor this price you are not in the game, I do not think that will be in the best interest of the consumer.

Chairman MANZULLO. And that is exactly what is going to happen.

Mr. MENZIES. Exactly right. Same will happen on the appraisal side. The next will be the real estate industry, so that we can get a chunk out of their fees, so—.

Chairman MANZULLO. Well, Mr. McDonald, with regard to the realtors, my concern, obviously, is I do not believe HUD has jurisdiction or authority. I do not believe they have the authority to get involved in RESPA in the first place.

When I was practicing law back in 1974 when this thing came along, and us small-town lawyers, we looked at each other and said, this thing is a joke, because our own closing statements had more disclosures and nobody understood APR.

They still do not understand why you can lock in at 6.0 and then you find out it is 6.1734976, and you have a long explanation like that. But is there any concern on the part of the realtors that the bundling could end up with the large lenders determining real estate commissions?

Mr. MCDONALD. Well, Mr. Chairman, we have a lot of concern about the whole proposal. But specifically to your question, the realtor community is looked to as the advisor through the real estate transaction, from the picking of the property through the mortgage process to the final closing; and oftentimes the buyer, because it is a very complex transaction, the buyer has to have help in deciding a lot of issues, and it comes down to oftentimes they do not know the local market. They may be coming in from out of town or they may be a local person, but they do not know who provides that.

Chairman MANZULLO. And you can make recommendations.

Mr. MCDONALD. Yes.

Chairman MANZULLO. And you are getting no kickback on that?

Mr. MCDONALD. Usually we do not receive kickbacks in violation of the RESPA, but we do make recommendations, based on the quality, as well as the price, and sometimes the lowest price is not always the best deal. And if we have to go to a package provider who will not tell us who is providing that service or the level of service they are receiving included in that price—because there are different levels of service that can be called the same thing—if we do not know and they are not disclosing all of those things, then we have no ability to advise that purchaser or that seller on whether or not that is a good package and a good price.

Chairman MANZULLO. Are people coming to realtors, are consumers coming to realtors, and asking about price at closing, et cetera, even before they sign a listing agreement?

Mr. MCDONALD. Well, I think consumers are much more knowledgeable today and they come into a transaction oftentimes price conscious, but that is not—I do not think that is their single motivation.

Chairman MANZULLO. They want to buy or sell a house in this case.

Mr. MCDONALD. Yes, and then they rely on the individual advisors that they hire to advise them on the—not only on the price structure, but the quality of the service that they are going to be receiving for the money that they are going to be paying.

Chairman MANZULLO. Mr. Friedlander, are consumers calling title companies and shopping for closing prices?

Mr. FRIEDLANDER. It is amazing what is happening today where I am getting consumers calling me and asking about our fees and charges. They understand about reissue rates on title policies.

The title service is not a commodity. It is a complicated process where we have to make sure the documents are correct, the legal description is correct, the names are correct, the documents are executed properly, we get the proper payoffs on the outstanding loans, we do the proper prorations of the taxes, according to the contract. This is not something that you can just give to a clerk and say close the transaction. You need sophisticated, highly paid experts, in order to do this process properly.

We consider ourselves guardians of the public record, and we make sure that the documents that we put to record are proper and correct and carefully done. And if we are forced through price squeezing to reduce the service, the record is not going to be the quality that we have gotten used to, and I fear that in the distant future we will pay dearly for that.

Chairman MANZULLO. I remember the—when I was involved in one real estate closing, there is some national newspaper that thinks I have some type of an interest; I mean, you know, I have never had an interest in anything, except representing my clients, and that was—the last closing was in 1992, so for the record, I have no interest in any real estate company, any title company, or anything like that. But one of the things that I noticed was the hearing that we had last time in March with Dr. Weicher, who—who thought it of no significance that a buyer's attorney be present at the real estate closing, and that is what sparked what were some considerable fireworks.

Mr. FRIEDLANDER. Once again, we have an issue of different parts of the country, everything is different. In some parts of the country the attorneys are present at every closing. In other parts of the country they are not.

Chairman MANZULLO. They just review the documents.

Mr. FRIEDLANDER. Right. They do an escrow closing where everything is done in the mail, and a table closing where everything takes place at the table at that one time. So again, in order to try to have a national program where one size fits all is a very, very difficult undertaking.

Chairman MANZULLO. You had mentioned in your testimony, Mr. Friedlander, that American Land Title Association will bring a lawsuit challenging what RESPA is doing here.

Mr. FRIEDLANDER. Our board voted unanimously that we feel that HUD has gone way beyond the bounds of rulemaking and has gone into legislation, and that legislation should be referred to Congress.

Chairman MANZULLO. I appreciate that. You understand what is going on.

Comment?

Mr. FRIEDLANDER. And that is why we will absolutely—our board has approved bringing—.

Chairman MANZULLO. No, there are some Federal district courts, including the Federal District Court for—the Middle District Court for Florida has held that if HUD does not comply with RESPA, according to the—HUD does not comply with the Regulatory Flexibility Act, then all these regulations are null and void and they have to start all over again. I mean, why is HUD bringing a lawsuit here by proceeding to file a rule in between sessions of Congress, with no accountability to the parties, in total secrecy, inviting a lawsuit that could cost the U.S. taxpayers millions of dollars to defend across the Nation?

Can anybody answer that question for me?

Mr. MENZIES. We were kind of hoping you were going to answer that question, Mr. Chairman.

Ms. BORDALLO. Thank you very much, Mr. Chairman.

This is a very interesting hearing. It seems everyone is opposed to the RESPA proposal by HUD, and public input, Mr. Chairman, is a very sensitive issue with me, and I am very curious and I must commend you, too, on your theme. I like your theme: Working behind closed doors to hurt small businesses and consumers.

I am curious and maybe you can educate me. When you change a process, public input should always be adhered to. I cannot imagine everybody being so solidly against a proposal, and as the Chairman said, you do not fix something that isn't broken.

What my question is, is did any of you—and I am sure you did write letters of opposition and suggestions that you had—were any of them at all taken into account? And if so—of course, you haven't really seen the proposal, I guess it is all so secretive—but were any of these suggestions part of the final proposal?

Mr. MCDONALD. No.

Ms. LOWRIE. I might try and take a stab at that for you.

At this point, we haven't seen the final rule so it is very difficult to say, but I can venture to say I can speak for the Mortgage Bankers Association. We submitted over 60 pages of comments on areas of the proposed rule that we felt would not work within the industry.

Elaborated, had numerous face-to-face meetings with HUD and, more recently, meetings with OMB, and in a lot of those discussions and discussions with the other trade associations, the Mortgage Bankers Association even went so far as to do an industry letter with—the American Land Title Association, the Mortgage Bankers Association, the National Association of Home Builders, the National Association of Mortgage Brokers, and the National Association of Realtors sent an industry letter asking for a reproposal of the rule to Secretary Martinez prior to his resignation.

That letter was sent on December 8, so I think all of the industry participants have really tried.

Ms. BORDALLO. So, anybody else? You all sent in letters and suggestions?

Mr. SAVITT. There were also 40,000 letters sent to HUD, public comments, regarding the proposed rule, and to my understanding, it is the largest amount of comments they ever received on any issue, so they do have the public comments.

Mr. FRIEDLANDER. These comments were not just Mimeographed, me, too; me, too; these were well-thought-out comments, and we have read them and some of them are excellent and thoughtful. So it was not just paper killing trees. It was very good reaction. And again it has been a one-way communication. We have been talking to them and we are not getting any feedback back from them or any kind of dialogue.

Ms. BORDALLO. And no one has seen the proposal or has any idea what is included?

Mr. SAVITT. No.

Ms. BORDALLO. Well, Mr. Chairman, I find this to be unbelievable, that there should be so much—40,000 letters and all of the various companies here today testifying against the proposal, and we are going forward with this, and now it is in the hands of OMB and they are looking at it.

So I would suggest, Mr. Chairman, in knowing how strong you are in your commitments, that we make it very loud and clear that this should not go forward. And, incidentally, just for the record—oh, I am sorry.

Mr. MCDONALD. Well, I would just add to the comments that have already been made to your question that we submitted a number of suggestions from our organization, one of which was to not—to drop the idea of the guaranteed package and look at the good faith estimate. We talked about—because there were some problems with the good faith estimate that we thought could be addressed, but the attempt by HUD to address those was also flawed, and so that did not go very far.

And I think the best answer to your question is that, regardless—we may not agree on everything in opposition to the proposal, but one thing I think that is certain is that every segment of the industry, every major segment of the industry has said that this proposal is flawed and should not be moved forward as a final proposal and that, at the very least, it needs to be reissued and another look taken at it. But everybody agrees that it is a flawed proposal, and when you have a whole industry saying you are moving in the wrong direction, you are going to negatively impact our industry, why in the world would you want to move ahead with that type of proposal?

Ms. BORDALLO. Well, I certainly agree with that statement. And I, just for the record, Mr. Chairman, I want to say that I represent the territory of Guam. People here commented about small businesses, and we are really small out there, and we are a long way off, but I have received numerous letters from our real estate association on Guam, and my response is to oppose the HUD proposal. So I just want you to know that I am on your radar screen.

Thank you, Mr. Chairman. Thank you.

Chairman MANZULLO. Thank you.

Just briefly, I am looking at the Federal Register and I read the entire proposed regulation. Pretty boring, but—but it is also shocking, because I can see where Dr. Graham is coming from with his very analytical and trained mind in finances.

When you take a look at—there is some stab in the dark that this bundling would save $700. There is no substantiation at all in there, and it presumes that in the present system the consumer is being gouged to the extent of 700 bucks. It is just a figure that is taken out of nowhere. And I think it is also extremely shocking, I guess it takes the trained eyes of a person who practiced real estate law for 22 years to discover this, but, on page 49144—again, this is the last proposal, it says "Packages/guaranteed cost. Under the packaging or guaranteed cost approach envisioned in the report, the lender or other packager would set a lump sum price for settlement costs and would be held to that figure from the time the package is agreed to for settlement." that being, you are going to pick the highest one to give yourself the best cushion, and if for some reason you come in a little low, you just squeeze some of the providers.

But listen to this. "most charges for services that the borrower currently pays as settlement for origination, title work and insurance, credit report, appraisal, document review, inspection, up-front mortgage insurance, pest inspection, and flood review would be included in the package." .

Notice that term, "document review." .

Who is reviewing the document and on behalf of whom? This is a lawyer that the lender has hired. That lawyer's fiduciary obligation is to the lender and not to the consumer.

This will invite mischief, untold mischief, because when you buy the package, you buy everything in that package. They are not going to give you a list to pick and choose. They are going to pick your attorney, and you know what they are going to do? They are going to pick a yes man, because he wants to make sure everything is okay on behalf of the lender.

What things come up at a real estate closing that you do not envision where a purchaser is protected by an attorney who may choose to be protected or may close in escrow or preview the documents in advance? That comes with years of training, specialization.

I had one closing where this guy was buying an island.

No, not yours.

It was in the Midwest. It was in the middle—there was no access, and everybody missed it, including the title company. It was just one of those things, and I caught it, and title company was grateful.

It was one of those crazy things, where it just showed that the more parties of adverse interests that are present at a real estate closing, the more protected is the consumer.

Who protects the consumer at a real estate closing when the blacktop driveway has not been put in on a new construction?

Who is going to be there to suggest that $2,750 be placed into an escrow account?

Well, if you take a look at all the parties involved there, this person could close without that blacktop going in; I mean, this is much more complicated.

Ms. BORDALLO. Yes.

Chairman MANZULLO. And we are dealing with the most complicated transaction. And you know what? It should be complicated, because it involves the largest purchase that any consumer will ever make.

Well, listen, you guys have—that is the Midwest. You witnesses have been exemplary.

I want to thank the folks from HUD and OIRA and the staff folks who came here and sat through the hearing as a courtesy to these witnesses who have come from a long way, many of them, especially Mr. McDonald and Mr. Friedlander, to be present with us.

Suggestion from this Chairman is that OIRA will send it back to RESPA and say forget it—I am sorry, send it back to HUD, and say just forget it; you have not made your case that there is a problem sufficient enough to warrant this type of government intrusion and intervention.

Again, thank you for your participation, and this hearing is adjourned.

[Whereupon, at 11:45 a.m., the committee was adjourned.]

Congress of the United States
House of Representatives
108th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

Statement of Donald A. Manzullo
Chairman
Committee on Small Business
United States House of Representatives
Washington, DC
January 6, 2004

This is the Committee's second hearing on the Department of Housing and Urban Development's plan to modify regulations governing the real estate settlement process. I remain as concerned today about the process and procedures used to develop the final rule that was submitted to the Office of Information and Regulatory Affairs on December 16, 2003 for review as I was at the time of the Committee's hearing in March, 2003. Nothing in the interim has given me any assurance that the Department has adequately addressed the concerns of small businesses.

On March 19, 2002, the President stated that "every agency is required to analyze the impact of new regulations on small businesses before issuing them. That is an important law. The problem is it is often being ignored. The law is on the books; the regulators do not care that the law is on the books. From this day forward they will care that the law is on the books. We want to enforce the law."

The President was talking about the Regulatory Flexibility Act or RFA. The statement was categorical and applied to all agencies. There was no exception for the

Department of Housing and Urban Development or for regulations that are supposedly consumer friendly.

Compliance with the RFA is not just another procedural hoop that agencies must jump through. Instead it provides the focal point around which rational rulemaking should be conducted. This is especially true in the residential real estate industry – an industry consisting of hundreds of thousands of mainly small businesses. Without a proper analysis, HUD cannot assess whether the rule that it finalizes will be rational.

Since the hearing in March of 2003, I have sent two letters to the Department requesting a delay in finalizing any revised regulations until the Committee and affected industry had the opportunity to review the final regulatory flexibility analysis. My requests were based on the fact that the Department's initial regulatory flexibility analysis was so flawed that this Committee could not be certain that any changes made by the Department would prove adequate under the Regulatory Flexibility Act. The Department provided no response to this Committee until months after the request and on the eve of this hearing. Like the initial regulatory flexibility analysis, the responses provided nothing of value. Such cavalier dismissal of this Committee's concern simply is unacceptable when the existence of thousands of small businesses is at risk.

The Department is rushing to judgment. The marketplace is responding; hundreds of companies are offering packages of settlement services. This Committee, consumer groups, the small businesses represented on the second panel today, and the largest lenders all have expressed concerns about a final rule that is substantially similar to the proposed rule. Given the Department's evident lack of understanding of real world experience in the real estate settlement process, many groups, including consumer

groups, and this Committee continue to call on the Department to issue a new proposed rule with an adequate regulatory flexibility analysis.

Moving forward blindly is in no one's interest; further review to ensure that the Department gets it right in one of the most vibrant sectors of the American economy is absolutely critical. Issuing a new proposed rule will comply with the President's demand that agencies comply with the RFA, demonstrate understanding of the wishes of Congress, and show thousands of small businesses that the Department wants to make workable changes to the real estate settlement process.

STATEMENT OF
JOHN D. GRAHAM, PH.D.
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

January 6, 2003

Mr. Chairman, and Members of the Committee, thank you for inviting me to this hearing. I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, (OIRA) Office of Management and Budget. I am pleased to have this opportunity to explain OMB's role in reviewing the Real Estate Settlement Procedure Act (RESPA) Regulations. As you know Mr. Chairman, the RESPA rule is currently under review at OMB. Accordingly, my testimony cannot address the substance of the rule or internal administration deliberations. What I can testify to, however, and am happy to reassure the Committee of, is OMB's commitment to thoroughly review the rule. This will include a comprehensive examination of HUD's regulatory impact analysis, regulatory flexibility analysis, and other analysis required by statute and executive order. Furthermore, I can assure you that OIRA remains committed to the unprecedented degree of openness in the regulatory review process that has been fostered under this administration.

Our general review procedures for rulemaking are as follows. Under Executive Order 12866, which was adopted during the previous Administration, OMB reviews all significant regulatory actions to ensure consistency with the principle of good regulatory analysis and policy. At both the proposed and final stages of a major rulemaking, OMB is provided with up to 90 days to review an agency's rulemaking package, including the draft rule, the regulatory impact analysis, the Regulatory Flexibility Act analysis if required, and any other supporting materials. Since HUD's rule will have a significant effect on a substantial number of small entities, a Regulatory Flexibility Act analysis is required for the RESPA rulemaking. In EO 12866, the President directs agencies, to the extent permitted by law, to follow certain principles in rulemaking, such as consideration of alternatives and analysis of impacts, both benefits and costs. There are ultimately three possible outcomes of OMB review: (1) conclusion of review and publication in the *Federal Register;* (2) withdrawal by the agency for further consideration; or (3) return by OMB to the agency for reconsideration.

While a rule is under review, EO 12866 requires us to have an open-door policy. By consulting OMB's web site, the public can learn on a daily basis which rules are under formal review at OMB, which have been cleared or returned, and even which groups have recently presented their views to our office: their names, organizations, the date of the meeting and topic of the discussion. We will meet with any party interested in discussing regulatory issues, whether they are from State or local government, small

business, big business, consumer groups or the environmental, health, safety or other communities. As you know, we cannot discuss the substance of a rule under review with any outside groups prior to publication of the rule; however, we do take into account any comments raised by these outside groups during the rule review process. Any material received from outside parties on rules under review is placed in the public docket and noted on OMB's website. In addition, a representative of the agency that submitted the rule is always invited to attend these meetings, to ensure that OIRA and the agency receive the same information. We have already hosted a number of meetings with concerned consumer and industry groups regarding the RESPA rule, and we anticipate hosting additional meetings as they are requested during the review process.

Upon publication of a rule, OMB's docket file is made publicly available. That public docket file contains a copy of the rule as submitted to OMB, a copy of the rule post OMB review, and any formal communications between Senior Executive Service (SES) employees or policy officials between OMB and the rulemaking agency. It also contains any information submitted by outside groups during our review.

In addition to communications with outside groups, OMB coordinates review by other agencies in the Executive Branch with an interest in the rulemaking.

OMB is very aware that small businesses often face a disproportionate share of the Federal regulatory burden compared to their larger counterparts. Pursuant to Executive Order 13272 which deals with small entity and agency rulemaking, OMB and the Office of Advocacy signed a Memorandum of Understanding (MOU) to enhance our working relationship, improve information sharing and provide training for agencies on compliance with the Regulatory Flexibility Act. This MOU establishes an information sharing process between Advocacy and OIRA when a draft rulemaking is likely to impact small entities. Consistent with this MOU and EO 13272, OIRA and Advocacy are working together in the review of the RESPA rule. The Regulatory Flexibility Act (RFA), in this case, requires HUD to examine the impact of their rulemaking on small firms such as settlement service providers, mortgage brokers, and small lenders.

It should be noted, however, that the RFA is one of many analyses that OMB evaluates. Statutes such as the Unfunded Mandates Reform Act and the Paperwork Reduction Act require agencies to perform similar analyses of specific costs, benefits, and burdens associated with rulemakings. EO 12866 requires agencies to evaluate *all* costs and benefits to society from a regulation.

While I am not able to discuss the substantive issues raised by the draft RESPA final rule, I would like to mention a number of matters that OIRA addressed at the proposed rule stage. When OMB concluded review of HUD's proposed RESPA rule in June 2002, we sent HUD officials a "post-review" letter, highlighting issues that should be taken into consideration when drafting the final rule. As we said in the letter, OMB considers this rulemaking endeavor to be very promising, since it strengthens consumer protection and promotes consumer choice, thereby creating positive market changes. In drafting the final rule, we asked HUD to pay special attention to forms, economic analysis, and

regulatory flexibility analysis in order to make them even stronger at the final stage than they were at the proposed stage. An important task in our on-going review is to assess whether HUD has strengthened these components of the rule.

Chairman Manzullo, you have requested that OIRA conduct a rigorous review of this matter. I can assure you that the RESPA rule is receiving a thorough review. We appreciate your interest in the rule, and will work to address the concerns that you have raised throughout the process. Thank you very much for the opportunity to appear today. I am happy to take any questions you may have.

Prepared Testimony of Neill Fendly, Government Affairs Chair & Past President

National Association of Mortgage Brokers

on

Real Estate Settlement Procedures Act Regulations: Working Behind Closed Doors to Hurt Small Businesses and Consumers

before the

Small Business Committee

U.S. House of Representatives

Tuesday, January 6, 2004

Chairman Manzullo, Ranking Member Velazquez, I am Neill Fendly, Government Affairs Committee Chair and Past President of the National Association of Mortgage Brokers (NAMB). Thank you once again for the opportunity to discuss an issue of vital importance to the small business community and specifically, mortgage brokers. NAMB is the nation's largest organization exclusively representing the interest of the mortgage brokerage industry and has more than 18,000 members and 46 state affiliates nationwide. NAMB members subscribe to a strict code of ethics and a set of best business practices that promote integrity, confidentiality, and above all, the highest levels of professional service to the consumer.

Today, mortgage brokers originate more than two out of three residential mortgages.[1] There are many reasons for this large market share. Mortgage brokers are typically small businesses[2] who operate in the communities in which they live, often in areas where

[1] Wholesale Access, *Mortgage Brokers 2002,* July 3, 2003.

[2] The Small Business Administration Office of Advocacy cites that a mortgage broker is a small business if its annual revenues do not exceed $6 million. *See Attachment 1,* Comment Letter, Small Business Administration Office of Advocacy, "RESPA: Department of Housing and Urban Development: Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process for Obtaining Mortgages to Reduce Settlement Costs for Consumers; Proposed Rule; Docket Number: FR-4727-P-01," October 28, 2002.

traditional mortgage lenders may not have branch offices. Mortgage brokers provide lenders a nationwide product distribution channel that is much less expensive than traditional lender branch operations.

We would like to thank Chairman Manzullo and the members of this Committee for your leadership and interest in the proposed Department of Housing and Urban Development (HUD) Real Estate Settlement Procedures Act (RESPA) rule and your continued commitment to protect small businesses. NAMB would also like to thank this Committee for its vigilance in holding hearings on this issue, the first of which was held March 11, 2003 on the effects of the RESPA rule on small business. We will not reiterate all of our concerns with HUD's proposal as we have detailed our concerns previously through several Congressional hearings. Instead, we will focus today on the regulatory process HUD used or failed to use in promulgating their proposed RESPA rule.

On December 16, 2003, HUD sent to the Office of Management and Budget (OMB) the final RESPA rule. Unfortunately, for purposes of this hearing, NAMB cannot comment on the details of the final rule currently under review by OMB. We do not know if significant changes have been made to the final RESPA rule sent to OMB, as we and other interested parties, were not afforded an opportunity to comment publicly on the final rule. Instead of blindly guessing the contents of the final rule, NAMB can only comment on the facts. What we do know thus far is this - HUD received over 40,000 comment letters expressing grave concerns about the proposal; the National Federation of Independent Business (NFIB), Small Business Administration (SBA), Federal Trade Commission (FTC), Congressional Hispanic Caucus, several members of congress and others wrote letters to HUD raising serious concerns about the rule; and finally, the proposal was the subject of five congressional hearings. As a result of these hearings and letters, many members of Congress and interested parties requested that HUD issue a revised proposed rule instead of moving to a final rule.

Given the significant number of concerns about the Proposed Rule that were raised and documented, NAMB is disappointed that HUD moved forward to a final rule and did not give us an opportunity to review and comment on any subsequent final changes to the controversial proposal. HUD's decision to move to a final rule without public comment may call into question the integrity of the process and, may ultimately, serve to harm consumers.

As we are not in a position to comment on the final rule, we will focus on the facts. Focusing on the facts, also allows us to comment on the substance and procedures HUD used or failed to use in issuing their proposed RESPA rule.

HUD's Proposed RESPA Rule

HUD's request for comments on their RESPA proposal issued July 29, 2002, included 30 specific questions[3] that would have been more appropriate as part of an Advanced Notice

[3] "Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process for Obtaining Mortgages to Reduce Settlement Costs to Consumers," U.S. Department of Housing and Urban Development, at FR49155, July 29, 2002.

of Proposed Rulemaking (ANPRM). HUD has demonstrated on a few occasions its preference to pose questions to the public as part of an ANPRM.

Asking 30 questions clearly indicates that HUD was investigating and conducting their research on the key components of a proposal that was in the very early stages of development. HUD received more comment letters for this proposal than any other proposal issued by HUD. HUD proposes to make bold changes in the marketplace through implementation of their RESPA proposal. In the interest of consistency and in the interest of individuals affected by the proposal, NAMB believes HUD should have issued an ANPRM as a first step in the RESPA rulemaking process.

In addition, NAMB believes HUD did not comply with the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act and Executive Order 12866 in developing their proposal. HUD's economic analysis required under these laws has major inconsistencies and inaccuracies, which require further examination.

HUD's Lack of Compliance with Federal Regulatory Law

When promulgating Proposed and Final Rules, the RFA requires federal agencies to review the rules for their impact on small businesses and consider less burdensome alternatives. Pursuant to the RFA, if a Proposed Rule is expected to have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) must be prepared. [4] The IRFA must describe the economic impact of the Proposed Rule on small entities including a description of the projected reporting, record keeping and other compliance requirements of the Proposed Rule.[5] The IRFA must also contain a comparative analysis of alternatives to the Proposed Rule, which would minimize the impact on small entities and document their effectiveness in achieving the regulatory purpose. [6]

HUD prepared their IRFA in conjunction with the analysis required by Executive Order 12866. [7] NAMB does not believe HUD sufficiently complied with the RFA when promulgating their Proposed Rule for two reasons. First, HUD's IRFA did not contain a sufficient comparative analysis of alternatives to the Proposed Rule that would minimize the impact on small entities. Second, HUD's IRFA does not accurately describe the projected reporting and record keeping requirements and other compliance requirements of the Proposed Rule, including an accurate estimate of the classes of small entities that will be subject to the requirements of the Proposed Rule.

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[4] If the Proposed Rule will not significantly impact a substantial number of small entities, the head of an agency must certify as such and provide factual determination. When an agency issues a final rule, it must prepare a Final Regulatory Flexibility Analysis (FRFA), 5 U.S.C. § 603.

[5] *Id.*

[6] *Id.*

[7] Executive Order (EO) 12866 was introduced to, among other things, reinforce the RFA. EO 12866 directs federal agencies to assess all costs and benefits of available regulatory alternatives. The EO requires agencies to prepare a regulatory impact analysis for final rules that are deemed economically "significant" (that is, a final rule that would have an annual effect on the economy of $100 million or more in any 1 year, or would adversely affect in a material way a sector of the economy).

The Small Business Administration Office of Advocacy (SBA) expressed concern about HUD's IRFA. Pursuant to SBA's statutory duty to monitor, examine and report agency compliance with the RFA, as amended by the Small Business Enforcement Fairness Act of 1996 (SBREFA), the SBA submitted a comment letter encouraging HUD to issue a revised IRFA "that takes into consideration the comments of affected small entities and develops regulatory alternatives to achieve HUD's objectives while minimizing the impact on small business."[8] The SBA recommended that HUD publish a supplemental IRFA to provide small businesses with "sufficient information to determine what impact, if any, the particular proposal will have on its operations" and "provide a meaningful discussion of alternatives that may minimize that impact."[9] Since the Proposed Rule is now in the final rule stages, it is clear and unfortunate that HUD ignored the SBA's recommendation to issue a supplemental IRFA.

HUD's Economic Analysis is Flawed and Inconsistent

NAMB believes that the Economic Analysis prepared by HUD does not provide a clear picture of the potential impact on a market that is functioning effectively and does not accurately reflect the Proposed Rule's impact on small business. In fact, HUD's economic analysis is flawed, incomplete, and inaccurate.

Although HUD's Economic Analysis states that $3.5 billion of the $5.9 billion (55%) in transfers to consumers will come from small businesses,[10] the SBA explained in their comment letter that HUD's Economic Analysis would be improved by a revised IRFA, which clearly defines the impact on small entities, instead of citing the mere overall cost to small business. [11] Since HUD did not specifically compute the costs of compliance per small business, HUD could not and did not sufficiently analyze regulatory alternatives as required by RFA that would minimize the burden on small businesses.[12]

HUD's failure to accurately analyze the economic impact on small business can be illustrated through their own reported inconsistencies. HUD's Paperwork Reduction Act Submissions to OMB states that the annual responses for Good Faith Estimates (GFEs) is 11 million.[13] However, HUD's Economic Analysis states that if the rule applied in the year 2002, it would impact 19.7 million applications.[14] HUD's OMB Submissions are inaccurate and unreliable as HUD underestimates the paperwork burden by at least 8.7 million GFEs or by 44%. This places an additional $57 million paperwork burden on small businesses.

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[8] SBA Comment Letter at p. 2.
[9] SBA Comment Letter at p. 5.
[10] "Economic Analysis" at p. 26.
[11] SBA Comment Letter at p. 4.
[12] It is important to point out that NAMB has spent countless hours and resources to strengthen, simplify and clarify the disclosure of costs provided to consumers in advance of settlement. NAMB submitted an alternative disclosure form set forth in our comment letter that satisfies the objectives of HUD to simplify the mortgage process, but not at the expense of small business or to the detriment of consumers. It will allow the consumer to perform a true "apples to apples" comparison of the cost of the mortgage while maintaining a more level playing field for mortgage originators.
[13] *See Attachment 2*, "Supporting Statement for Paperwork Reduction Act Submissions," U.S. Department of Housing and Urban Development, August 2001, p. 5.
[14] "Economic Analysis" at p. 9.

In addition, HUD's Economic Analysis states "originators and closing agents will have to expend some minimal effort in explaining to consumers the differences between the enhanced GFE and the more detailed HUD-1."[15] However, HUD did not perform their due diligence to ascertain these costs since the costs were not included in HUD's submission to OMB. The cost associated with explaining to consumers the new enhanced GFE and the more detailed HUD-1 is not "minimal." This demonstrates that HUD's Economic Analysis is unreliable and flawed, as it did not even consider this "effort."

HUD states that the program change being mandated by the Proposed Rule would increase the burden on the industry by 2,530,000 burden hours.[16] This is equal to 289 years. HUD concedes this, but suggests it is a one-time transition "cost" for the industry and yet calls this burden deregulation.[17] In addition, HUD's Economic Analysis does not provide thorough regulatory alternatives to achieve HUD's objectives while minimizing the impact on small business as required by the RFA. HUD should have proposed other alternatives that are less burdensome for small businesses than the 289 year burden imposed as a result of this rule

NAMB is concerned that by arbitrarily reducing small business revenues while substantially increasing the regulatory burden on small business by 2.5 million burden hours, small business will be devastated in the mortgage industry. Mortgage brokers serve as an efficient distribution channel for consumer access to credit from a variety of lenders. In our opinion, one of the economic results of the Proposed Rule will be a shift of consumer access to credit from small mortgage brokerage operations to a few large lenders thereby narrowing the choice of credit products for consumers. As a result, consumers will suffer an increase in the cost of credit and a reduction of choice and access to credit.

HUD's OMB Submissions anticipate that the new disclosures under the proposal will require additional time to complete and to explain to the consumer, therefore, "the previous submission of 6.5 million hours are increased to 12.2 million hours."[18] The number published in the Federal Register was 6.5 million burden hours. An increase of over 87 percent in burden hours, which is equal to 650 years, is significant and should be reflected in a revised Proposed Rule.

The Proposed Rule will allegedly improve a customer's ability to shop and actually facilitate shopping. If this proposal achieves that goal, then a customer could go to ABC bank get the GFE and then get in his/her car and drive to Broker X and compare GFEs. The physical act of shopping is not a costless exercise and takes time and resources. However, HUD's Economic Analysis ignores this transaction cost and arbitrarily asserts a savings thereby overstating the benefits of the proposal.

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[15] *Id.* at p. 25.
[16] "Supporting Statement," p. 7.
[17] Senate Banking Committee, Hearing on Issues Relating to HUD's Proposed Rule on the RESPA, HUD Secretary Martinez, March 20, 2003.
[18] "Supporting Statement," p. 7.

HUD claims that the Proposed Rule will lower closing costs for consumers by $700.[19] HUD has not documented this savings or explained the basis for the assumptions of the savings. HUD also did not provide documentation of how this alleged savings would be passed along to consumers. Basing a Proposed Rule on a flawed economic analysis will result in a flawed final rule that harms consumers and could have devastating repercussions in a $2 trillion housing market.

Conclusion

NAMB is very concerned that the RESPA proposal is now under review at the OMB, as we do not know if the contents of the rule are similar to those proposed in July 2002. We believe HUD should have completed a more expansive and realistic review of the economic impact their proposal would have on small businesses by issuing a revised Proposed Rule and not a final rule. We can only hope the interests of homebuyers and the small business industry that serves those homebuyers will be protected in the final rule.

We appreciate the opportunity to share our concerns with you today. We hope the Small Business Committee will protect against the extinction of small businesses in the mortgage industry as a result of HUD's Proposed Rule.

[19] Senate Banking Committee, Hearing on Issues Related to HUD's Proposed RESPA Rule, HUD Secretary Martinez, March 20, 2003.

Attachment 1

Office of Advocacy

October 28, 2002

Richard A. Hauser, Esquire
General Counsel
Office of the General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-0500

Re: Department of Housing and Urban Development: Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process for Obtaining Mortgages to Reduce Settlement Costs to Consumers; Proposed Rule; Docket Number: FR-4727-P-01

Dear Mr. Hauser:

As part of its statutory duty to monitor and report on an agency's compliance with the Regulatory Flexibility Act of 1980 ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),(1) the Office of Advocacy of the U.S. Small Business Administration ("Advocacy")(2) reviewed the Department of Housing and Urban Development's ("HUD") compliance with the RFA's requirements for the above-referenced Notice of Proposed Rulemaking ("NPRM").(3) On July 29, 2002, the Department of Housing and Urban Development (HUD) published a proposed rule on the Real Estate Settlement Procedures Act (RESPA) in the *Federal Register*, Vol. 67, No.145, p. on page 49134. The purpose of the proposal is to simplify and improve the process of obtaining home mortgages and reduce settlement costs to

consumers. The proposal addresses the issue of lender payments to mortgage brokers by changing the way that payments in brokered transactions are recorded and reported to consumers. It requires a Good Faith Estimate (GFE) settlement disclosure and allows for packaging of settlement services and mortgages.

After reviewing the NPRM and discussing it with affected small businesses,(4) Advocacy would like to encourage HUD to issue a revised initial regulatory flexibility analysis (IRFA) that takes into consideration the comments of affected small entities and develops regulatory alternatives to achieve HUD's objectives while minimizing the impact on small businesses.

RFA Requirements for a NPRM

The RFA requires agencies to consider the economic impact that a proposed rulemaking will have on small entities. Unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, the agency is required to prepare an IRFA. The IRFA must include: (1) a description of the impact of the proposed rule on small entities; (2) the reasons the action is being considered; (3) a succinct statement of the objectives of, and legal basis for the proposal; (4) the estimated number and types of small entities to which the proposed rule will apply; (5) the projected reporting, recordkeeping, and other compliance requirements, including an estimate of the small entities subject to the requirements and the professional skills necessary to comply; (6) all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and (7) all significant alternatives that accomplish the stated objectives of the applicable statues and minimize any significant economic impact of the proposed rule on small entities.(5) In preparing its IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or

alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.(6)

HUD's Compliance with the RFA

Pursuant to the RFA, HUD prepared an IRFA in conjunction with its Economic Analysis prepared under Executive Order 12866.(7) Section 605 of the RFA expressly permits agencies to perform an IRFA in conjunction with other analyses provided the analysis meets the requirement of the RFA. For the reasons stated below, Advocacy is of the opinion that further economic analysis prepared by HUD, in a revised IRFA, would improve the Final Rule.

Defining Small Businesses Affected by the RESPA Proposal

Section 601 of the RFA requires an agency to use the definition of small business contained in the U.S. Small Business Administration's ("SBA") small business size standards regulations,(8) promulgated by the SBA under the Small Business Act.(9) Below is a table of the SBA's definition of small business for the industries in which small businesses have contacted the Office of Advocacy to raise concerns regarding the impacts of this rule.(10)

NAICS Code	Industry Description	SBA Size Standard (revenues <=) in $ millions
531210	Mortgage Brokers (Real Estate Agents and Brokers)	6
522292	Real Estate Credit	6
541191	Title Abstract and Settlement Offices	6
531320	Offices of Real Estate Appraisers	1.5
561710	Pest Inspectors - Exterminators	6

The proposed rule will affect mortgage brokers, mortgage lenders, realtors, appraisers, pest inspectors, and settlement service providers. Although HUD acknowledged that the majority of the businesses in the

industries affected by the rule are small businesses, its economic analysis would improve by a revised IRFA that clearly defines the impact on those small entities.

HUD's analysis included the overall cost of compliance for the proposal in its analysis. A revised IRFA would allow for HUD to compute the compliance cost per small entity. This would enable HUD to identify and analyze significant regulatory alternatives to minimize the potential burdens on small businesses subject to the rule. In addition, this information would assist small entities in understanding the nature of the impact of the rule on their businesses.

Alternatives to Reduce the Impact on Small Entities

In addition to providing information about the economic impact of the action on small businesses, the RFA also requires an agency to consider less burdensome alternatives to the proposed action. In this particular rulemaking, there may be viable alternatives that HUD has not considered.

Good Faith Estimate (GFE) Provisions

Advocacy supports the notion of protecting consumers from predatory lending practices and providing the consumer with full disclosure about the mortgage lending process. Advocacy urges HUD to give full consideration to suggestions that reduce consumer confusion and are cost effective for mortgage brokers and community-based lenders.

Packaging

The purpose of packaging is to increase competition among settlement service providers and lower the cost of settlement services for the consumer. As with the GFE, Advocacy urges HUD to give full consideration to suggestions from the small business community concerning the packaging aspect of the proposal.

Conclusion

The RFA requires agencies to consider the economic impact on small entities prior to proposing a rule and to provide the information on those

impacts to the public for comment. As noted above, Advocacy recommends that HUD publish a supplemental IRFA to provide small businesses with sufficient information to determine what impact, if any, the particular proposal will have on its operations. In addition to providing the public with specific information about the economic impact on the proposal, the supplemental IRFA should provide a meaningful discussion of alternatives that may minimize that impact.

Secretary Martinez, Commissioner Weicher, and members of your staff in the Office of General Counsel, deserve credit for reaching out to small businesses and consulting with my office in the development of this rule. I am confident that we will continue to work together to ensure that these improvements to the mortgage financing process stimulate small-business growth and increased opportunities for homeownership. Thank you for the opportunity to comment on this important proposal. If you have any questions, please feel free to contact the Office of Advocacy at (202) 205-6533.

Sincerely,

Thomas M. Sullivan

Chief Counsel for Advocacy

Jennifer A. Smith

Assistant Chief Counsel

for Economic Regulation

Cc: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs

ENDNOTES

1. Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

2. Congress established the Office of Advocacy of under Pub. L. No. 94-305 to represent the views of small business before Federal agencies and Congress.

3. 67 Fed. Reg. 49134 (July 29, 2002).

4. On October 9, 2002, the Office of Advocacy held a roundtable on this rule. Mortgage brokers, mortgage lenders, realtors, appraisers, and third party service providers participated in the roundtable. In addition, on October 25, 2002, Advocacy met with minority members of the real estate community in Baltimore, Maryland to discuss the impact of this rule on their businesses.

5. 5 U.S.C § 603.

6. 5 U.S.C. § 607.

7. Advocacy reviewed the summary of HUD's analysis published as an appendix to the proposed rule and the complete Economic Analysis and Initial Regulatory Flexibility Analysis for RESPA Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers, prepared by HUD's Office of Policy Development and Research and accessible on HUD's Website.

8. 13 C.F.R. § 121.

9. 15 U.S.C. § 632. Section 601 also provides that an agency can use an alternate definition if the agency obtains prior approval from Advocacy to use another standard (and publishes the standard for public comment) or the statute on which a rule is based provides a different definition of small business, then an agency may use that definition without consulting with the Office of Advocacy. 5 U.S.C. § 601 (3).

10. This information was obtained from http://www.sba.gov/size/sizetable2002.html.

Attachment 2

Supporting Statement for Paperwork Reduction Act Submissions

Real Estate Settlement Procedures Act Disclosures
OMB Control No. 2502-0265
(Forms HUD-1 and HUD-1A)

A. Justification

1. The Department is proposing a rule to simplify and improve the process of obtaining a home mortgage. The proposed rule will affect the current information collection, which consists of third party disclosures needed to inform homebuyers about the settlement process. Currently, certain disclosures are required by the Real Estate Settlement Procedures Act (RESPA) of 1974 amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments. The statute is found at 12 U.S.C. 2601 et seq. and the implementing regulations at 24 CFR 3500. Required disclosures include: the Good Faith Estimate, Special Information Booklet, RESPA-Section 6 Model Disclosure and Acknowledgement of Probable Transfer of Loan Servicing, and the HUD-1 Settlement Statement. Other disclosures may be required under certain circumstances and include: the Initial Escrow Account Statement, Annual Escrow Account Statement, Affiliated Business Disclosure, and Escrow Account Disbursement Disclosure. The proposed rule would require a new format for the Good Faith Estimate. The rule would require a new disclosure, the "Guaranteed Mortgage Package Agreement," in lieu of the Good Faith Estimate, to be eligible for certain exemptions from Section 8 of RESPA. This exemption would exclude the requirement to give an Affiliated Business Disclosure in certain circumstances.

   Further explanations of RESPA, including statutory and regulatory documentation, is available through HUD's web page at **http://www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm**

   Real Estate Settlement Procedures Act (Regulation X);
   Escrow Accounting Procedures
   Final Rule
   Federal Register Vol. 60 No.31 Feb. 15, 1995

   Real Estate Settlement Procedures Act (Regulation X);
   Escrow Accounting Procedures: Correcting Amendment and Clarifications
   Final Rule
   Federal Register Vol. 60 No.89 May 9, 1995

   Real Estate Settlement Procedures Act;
   Streamlining Final Rule
   Final Rule
   Federal Register Vol. 61 No.59 Mar. 26, 1996

   Amendments to Regulation X, Real Estate Settlement Procedures Act;
   Withdrawal of Employer-Employee and Computer Loan Origination Systems (CLOS) Exemptions
   Final Rule
   Federal Register Vol. 61 No.222 Nov. 15, 1996

   Amendments to Real Estate Settlement Procedures Act;
   Exemption for Employer Payments to Employees Who Make Like-Provider Referrals and Other Amendments
   Proposed Rule
   Federal Register Vol. 62 No. 90 May 9, 1997

   Amendments to Real Estate Settlement Procedures Act Regulation (Regulation X);
   Escrow Accounting Procedures
   Final Rule

Federal Register Vol. 63 No. 13 Jan. 21, 1998

Real Estate Settlement Procedures Act (RESPA);
Regarding Lender Payments to Mortgage Brokers
Statement of Policy 1999-1
Federal Register Mar. 1, 1999

- HUD-1/HUD-1A - Uniform Settlement Statement. Buyers and sellers receive a statement of actual charges and disbursements pursuant to the settlement (see Section 4(a) of RESPA).

- Affiliated Business Arrangement Disclosure (formerly Controlled Business Arrangement). This disclosure is required when a settlement service provider refers a borrower to an affiliated provider. Section 461 of the Housing and Urban-Rural Recovery Act of 1983 added an exemption under Section 8 of RESPA for affiliated business arrangements (AfBAs) as long as certain requirements were met. The implementing regulations at 24 CFR 3500.15, require that a disclosure be given when a settlement service provider refers a borrower to another settlement service provider, when an AfBA exists. Proposed revisions to these regulations were published in the Federal Register on June 7, 1996 and August 12, 1996. The Department published final regulations on November 15, 1996 (effective January 14, 1997), which implement Section 2103c of the Act. The proposed rule exempts this requirement under certain circumstances.

- Special Information Booklet. Homebuyers receive this disclosure regarding the nature and costs of real estate settlement services (see Section 5(d) of RESPA).

- Good Faith Estimate (GFE). Lenders must give borrowers an estimate of the settlement costs that the borrower is likely to incur in connection with settlement (see Section 5 (c) of RESPA). The proposed rule requires a new format for the GFE that would make shopping easier. It also would require that the estimate be firmer by establishing a tolerance in variance on the HUD-1, from what was estimated on the GFE.

- Guaranteed Mortgage Package Agreement (GMPA). The proposed rule would require this disclosure in lieu of the GFE when a Guaranteed Mortgage Package, including a guaranteed settlement service cost and an interest rate guarantee is offered consumers.

- Escrow Disclosures. An initial escrow account statement is provided to borrowers at the settlement of a Federally related mortgage loan, and an annual statement is provided to borrowers showing the previous year's activities in the escrow account. The lender may ask the borrower to voluntarily contribute additional funds if the charge will substantially rise in the second year; a disclosure must be signed by the borrower. Section 924 of the Cranston Gonzalez Affordable Housing Act of 1990 (P. L. 101-625, approved November 28, 1990), amended Section 10 of the Real Estate Settlement Procedures Act of 1974 (RESPA, U.S.C. 2609 (c)). Regulations allowing voluntary collection of additional funds were published January 21, 1998, FR-3236.

- Servicing Disclosures. Lender must give the borrower a disclosure at application that the servicing of the mortgage loan may be transferred and another notice when the loan is transferred (Section 941 of the Cranston Gonzalez National Affordable Housing Act, P.L. 101-625 amended Section 6 of RESPA). RESPA was amended in 1996 to allow a streamlined disclosure, however, the Department has not finalized regulations pursuant to allow this change.

2. These third party disclosures are required by statute and regulations. Settlement providers make these disclosures to homebuyers, and in some cases sellers; pursuant to transactions involving Federally related mortgages. Disclosures are not submitted to the Federal Government.

3. These third party disclosures may be submitted to consumers electronically. Additionally, many disclosures are computer generated. The HUD-1 and HUD-1A are available on the RESPA web site and private companies offer software programs which generate HUD-1s . Except for the HUD-1 and HUD-1A, settlement providers are free to develop forms that are tailored to their individual procedures and needs. Lenders/brokers may use a computer generated program to estimate costs reported on the GFE for specific settlement services. Approximately 20,000 lenders generate an estimated 11 million loan applications which would require a GFE. It is estimated that at least 50% of the GFEs are now generated by computer. Many servicers are using integrated computer systems for billing, recordkeeping, and generating escrow statements. Software manufacturers continue to market improved versions of these systems.

4. The only disclosure containing partial duplication is the annual escrow account statement. To reduce duplication, servicers may adapt HUD-required information to comply with IRS reporting requirements regarding escrow account items, such as taxes. Furthermore, the rule allows servicers to report a "short year" in the first annual statement so that HUD-required annual statements can be issued coincident with IRS forms. In open-end lines of credit, the GFE and HUD-1 are not required when certain truth-in-lending disclosures are given.

5. The collection of this information does not impact small businesses.

6. This information is not submitted to the Federal Government. These third-party disclosures are required by statute, 12 U.S.C. 2601 et. seq. and regulations. The burdens on respondents are the minimum necessary to comply with the statute, and to assist borrowers in comparison shopping for loans and tracking escrow funds.

7. Information is not reported to HUD. Respondents are required to keep records (HUD-1, HUD-1A, escrow disclosures) for five years. Information may be requested from providers as part of an investigation. There is a three-year statute of limitations for the Secretary to bring an action under Sections 6, 8 and 9. RESPA does not provide for a statute of limitations for escrow disclosures. The Inspector General recommended a five year record retention to limit the paperwork burden.

8. The Department is soliciting comments in regard to the information collection. The Department's Office of Policy Development and Research estimates that approximately 11 million loans are originated each year. The Department is taking this opportunity to request additional burden hours to take into consideration this increase over the previous estimate in 2502-0265.

9. There are no payments or gifts to respondents.

10. There are no assurances of confidentiality provided to respondents.

11. There is no information of a sensitive nature being requested.

12. Estimated Number of Respondents, Responses and Burden Hours Per Annum

Information Collection	Number of Respondents	Frequency of Response	Responses per Annum	Burden Hour per Response	Annual Burden Hours	Hourly Cost per Response	Annual Cost
Information Booklet/GFE or GMPA	20,000	550	11,000,000	.33	3,630,000	20.00	72,600,000
HUD-1 or HUD-1A	20,000	550	11,000,000	.25	2,750,000	30.00	82,500,000
AFBA	10,000	240	2,400,000	.10	240,000	20.00	4,800,000
Initial Escrow	2,000	4,290	8,580,000	.08	686,400	*0.00	0
Annual Escrow	2,000	17,500	35,000,000	.08	2,800,000	*20.00	56,000,000
Escrow Disbursement	2,000	500	1,000,000	.083	83,000	20.00	1,660,000
Servicing Disclosure	20,000	550	11,000,000	.033	363,000	10.00	3,369,000
Transfer Disclosure	20,000	2,500	50,000,000	.033	1,650,000	10.00	16,500,000
TOTALS			129,980,000		12,202,400		$237,423K

*Cost of initial escrow is included in the annual escrow cost of $20.00, which also includes staff time, mailing cost, and equipment.

Explanation of Burden:

Good Faith Estimate, Guaranteed Mortgage Package Agreement, Special Information Booklet

- It is estimated it will take 20 minutes to complete and explain the new GFE to borrowers, or to complete and explain the GMPA to borrowers. The burden hours for these disclosure are increased due to the new formats for disclosure and to take in consideration the increased estimate of 11 million transactions rather than the previous estimate of 5 million.

HUD-1/HUD-1A

- Approximately 11 million loans close per year. The Department estimates that the HUD-1 can be filled-in in a minimum of 15 minutes. There are software programs available to settlement agents which provide an interactive form, thus allowing the form to be easily completed.

Initial Escrow Account Statement

- Approximately 11 million loans close per year, 78 percent of which carry escrow accounts requiring an initial statement (according to a HUD study), 11 million loans x .78 = 8,580,000 responses.

Escrow Disbursement Statement

- The Department estimates that 1,000,000 borrowers will voluntarily contribute additional escrow funds into accounts due to anticipated increases the second year. Servicers may collect additional funds as long as borrowers agree to do so through a disclosure. The Department estimates this disclosure will (1,000,000 x .083) result in 83,000 burden hours.

Annual Escrow Account Statement

- Thirty-one million mortgages carry escrow accounts. It is estimated that 15 percent of these mortgages change servicers each year requiring a new annual escrow account statement. Thirty-one million escrowed mortgages plus 4.65 million (15 percent of 31 million) change servicers each year equals to approximately 35 million responses. Actual responses per respondent will vary according to the number of escrowed mortgages serviced by each respondent.

Initial Servicing Disclosure

- Approximately 11 million loans are closed per year which require a disclosure, 11 million loans x .033 = 363,000 burden hours.

Servicing/Transfer Disclosures

- The transferor and transferee may send this disclosure jointly. About 50 million transfers of servicing rights are affected every year, according to a knowledgeable official at the Mortgage Bankers Association. We estimate that approximately 10% of the 50 million transfers receive a single disclosure.

Affiliated Business Arrangement Disclosure

- A settlement service provider must provide the AfBA disclosure when a borrower is referred to an affiliated provider. The Regulatory Impact Analysis estimated that 4.5% of all home sales transactions will involve an affiliated relationship (1999 sales transactions 2,400,000 x .045 = 108,000). An additional 10% of all loan applications will require a AfBA disclosure (2.4 million x .10 = 240,000).

13. There are no additional costs to respondents. Although the GMPA is a new disclosure and the format for the GFE are changed, according to private companies who provide document packages to lenders and other settlement providers, updates to state and federal regulations are provided at no additional cost.

14. There are no costs to the government except for a small cost associated with keeping the Special Information Booklet and the HUD-1 or HUD-1A up-to-date. These are third party disclosures that are not reported to the government.

15. The proposed rule provides a new Good Faith Estimate (GFE) format and provides a new Guaranteed Mortgage Package agreement that under certain circumstances may be used in lieu of the GFE. Both formats include a disclosure of options the consumer has for paying settlement costs and for lowering the interest rate. It is anticipated that these new disclosures will require additional time to complete and to explain to the consumer. Additionally, the Department is taking this opportunity to make an adjustment to increase the previous estimate of 5 million loans a year to 11 million loans a year. The adjustment is based on public comment and information provided by the Office of Policy, Development and Research. Therefore, the previous submission of 6,500,000 hours are increased to 12,202,400. Of this increase, 2,530,000 hours are attributed to a program change and 3,172,400 hours are due to an adjustment of increased loan volume.

16. The results of the information collection will not be published.

17. HUD is seeking approval to not display the expiration date on the forms HUD-1 and HUD-1A because of the very large volume that is generated. The forms are not only required by RESPA but are used for virtually all one-to-four family residential transactions and have become a standard instrument for settlement procedures throughout the industry.

18. There are no other exceptions to the certification statement identified in item 19 of the OMB 83-I than what is stated in item 17 above.

B. Collections of Information Employing Statistical Methods

The collection of information does not employ statistical methods.

TESTIMONY OF STANLEY B. FRIEDLANDER,
IMMEDIATE PAST PRESIDENT, AMERICAN LAND TITLE ASSOCIATION,
ON

"REAL ESTATE SETTLEMENT PROCEDURES ACT REGULATIONS: WORKING BEHIND CLOSED DOORS TO HURT SMALL BUSINESSES AND CONSUMERS"

BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

JANUARY 6, 2004

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Mr. Chairman, my name is Stanley Friedlander. I am immediate past President of American Land Title Association and President of Continental Title Agency of Cleveland, Ohio. I am accompanied by Ann vom Eigen, Legislative and Regulatory Counsel of ALTA.

ALTA appreciates the opportunity to appear before the Committee to discuss the process by which HUD has undertaken revision of the Real Estate Settlement Procedures Act and the potential implications of changing the regulations implementing the RESPA rule.

ALTA filed comments on the proposed regulations in October 2002, which we are submitting for inclusion in the Hearing record.

We emphasized the potential effect of the proposed rule on small business in a special supplemental comment we filed with HUD in late October 2002. In our comments, ALTA emphasized several major themes.

- HUD has exceeded its statutory authority, and the rule should not be implemented.
- The proposed rule will have a particularly onerous effect on small business settlement service providers, and should not be instituted.
- ALTA developed an alternative two-package approach that attempts to ameliorate the effect on small businesses.
- HUD's original proposal is not in the best interests of consumers.
- HUD should repropose the rule to allow the affected industries to determine if HUD was able to address any of the concerns raised in industry comments.

We are particularly disappointed that HUD did not consider reproposing the rule given current economic conditions and marketplace developments. Housing is currently the healthiest sector of the economy, and should not be put in jeopardy at the present time. Further, the marketplace has evolved to address many of the consumer needs HUD cited as justification for its rule and there is no need for a rule at the present time.

If the rule is substantially similar to the proposed rule, ALTA has been directed by its Board to institute litigation challenging the regulation. This would be particularly likely if, for example, a final rule contains an exemption to Section 8, the anti-kickback provision of RESPA.

As noted, our comments first emphasized that HUD had exceeded its statutory authority and the rule should not be implemented: In 1975 Congress repealed RESPA provisions requiring lenders to provide precise estimates of closing costs and penalties for such failures. ALTA believes that HUD should not implement far-reaching changes without Congressional approval and amendments, given the dramatic changes that a rule similar to the HUD proposed rule would involve.

Second, we expressed concerns that small business real estate settlement service providers should not be penalized: Widespread adoption of the HUD packaging regime would mean that settlement service providers would effectively have access to consumers only through lenders. Competing for access through lenders will affect settlement services businesses' ability to attract capital, make needed investments, and provide services needed by consumers on a timely basis. This will be particularly difficult for small businesses. Because this issue is of such importance, we filed the referenced supplemental comments with HUD on this issue. We are grateful that the Chairman has exercised his leadership in the area, has

recognized these concerns, held hearings on the effects of the proposed rule on small businesses, and has asked HUD to revise the economic analyses on this issue and adequately address the potential effects on all the small business providers affected by this proposed rule.

Third, we noted that HUD's proposal was not in the best interest of consumers. We believe that consumers should be allowed to choose services that protect their interests. HUD's packaging proposal is based on the premise that the needs of the lender will always also be identical to those of consumers. Under HUD's current "blind" packaging proposal, a consumer could purchase a lender package that would include a lender "packaging" fee. They might also end up (a) paying for a package that would not include the services they need; (b) paying twice for certain services, or (c) be forced to use a provider selected by, and beholden to, the lender rather than a provider of their own choosing.

Finally, we noted that if packaging is authorized, separate loan and settlement packages should be provided. ALTA believes that alternative packaging options should be authorized. Lenders would be able to offer a package of a loan and loan-related services at a guaranteed price. Title companies, real estate brokers, mortgage lenders and others could offer a guaranteed settlement service package of title and closing-related charges, recording fees, transfer taxes and other government charges–without an exemption from Section 8. Any savings achieved in the guaranteed settlement package would be passed directly to the consumer.

ALTA has consistently emphasized that the proposed regulations involved dramatic changes to the business relationships and service delivery system of the real estate settlement services industry, and that such radical changes should only be implemented after great thought and consideration. We specifically suggested in our original October 2002 comment that the Agency repropose the rule, to allow the affected industries to determine if HUD was able to address any of the concerns raised in the over 40,000 comments which were filed. The Notice-and-Comment rulemaking process has resulted in essentially a monologue with HUD and numerous effected parties. HUD has received diametrically opposed advice from different groups and has felt unable to share any of even its interim thinking with the public. This lack of give-and-take, while perhaps dictated by the strict terms of the Administrative Procedures Act, cannot result in the best possible rule—if any rule is to be developed and issued in the first place.

Many agencies have significant in-house expertise in the areas of their regulation. However, HUD has few professional staff who have actually worked in the real estate and settlement services industry. This is all the more reason to seek outside input. Therefore, HUD should take advantage of the enormous expertise in the private sector and engage in a dialogue before they propose a significant rule that will have dramatic results on the highly diverse and complex mortgage sales, finance, and closing process.

We are particularly disappointed that HUD did not consider reproposing the rule given current economic conditions. At present, housing is the healthiest sector of the economy. Record low interest rates have contributed to a phenomenal housing boom and an extremely high volume of refinancings. The mortgage lending and settlement services industry has been stretched to the limits of its physical and electronic infrastructure and capacity of its personnel—and yet has an enviable record in meeting consumer demands.

We did meet with HUD officials several times to express our concerns and explain our proposals. We have also met with the Office of Management and Budget to detail changes in the marketplace that have occurred since the rule has been proposed.

For example, a Google search performed on January 5, 2004 yielded many instances where guaranteed closing costs are offered. We have enclosed the first pages of that search for the Committee's benefit. Further, several of our member companies have developed guaranteed closing packages that are already offered in the marketplace. A November 19, 2003 Press Release from the First American Corporation, entitled "First American Introduces Mortgage Industry's First Complete Purchase Money Bundle of Services for Home Purchases," details that company's program. It is included as a specific example of our industry's efforts to meet evolving market concerns and needs. Clearly, the marketplace has evolved to address consumer needs, and there is no need for a rule at the present time.

We appreciate the Chairman's leadership on this issue, and hope that other members of Congress realize the potentially dramatic implications of this rule. We encourage the agency, at a minimum, to reconsider its position, and issue a reproposed rule that will allow the agency to indicate that it has recognized the many practical issues that were raised by the proposed rule. We would be happy to respond to any questions that the Committee may have.

The First American Corporation

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FIRST AMERICAN INTRODUCES MORTGAGE INDUSTRY'S FIRST COMPLETE PURCHASE MONEY BUNDLE OF SERVICES FOR HOME PURCHASES

- Also Unveils Bundle for Title Agents to Combine With Their Own Title Services -

SANTA ANA, Calif., November 19, 2003

The First American Corporation, (NYSE: FAF), the nation's leading provider of business information and related products and services, today introduced the mortgage industry's first consolidated bundle of products and services to complete home purchase transactions. First American is leveraging its broad menu of services and its market-leading technology to electronically produce and deliver its groundbreaking new Purchase Money Bundle and offer the nation's first specially priced, integrated package of mortgage information and settlement services from a single source.

The basic Purchase Money Bundle is composed of all of the origination and settlement services required by mortgage lenders to originate mortgages in purchase transactions including: credit reporting, flood zone determination, property valuation, title insurance and closing services. A version of the Purchase Money Bundle will also be available to title agents wishing to offer a bundle of real estate information products to complement their own title and settlement services. By offering services as a fixed, single-price package, First American offers the industry a product with unparalleled value.

"First American has been working toward the culmination of this strategy for more than 15 years, and after more than 50 acquisitions, I am proud that we are now able to bundle our industry-leading products to provide a comprehensive solution for our customers," said Parker S. Kennedy, president of The First American Corporation. "Housing and Urban Development Secretary Mel Martinez has been the catalyst in elevating the discussion of bundling to the forefront of the real estate industry and in establishing a market demand for a simplified closing process. First American is introducing its Purchase Money Bundle in response to this growing market demand and without the need for a change in HUD regulations."

Historically, pricing for appraisal, title and settlement services has varied greatly across the nation. Today, First American provides a breakthrough by offering these services in a single, simple package, with greatly enhanced standardization of product and price. First American's complete menu of industry services, combined with Web-based technology, gives the company the ability to produce its bundled product centrally and deliver it to customers at a fixed price in a highly flexible and customized format. First American was the first company to introduce a bundle for refinance transactions; and in October, the company pioneered the development of its California Affordable Homeownership Settlement Package, a discounted bundle of services to meet the needs of low-income markets.

Gary L. Kermott, president of First American Title Insurance Company stated: "Offering custom bundles without title services included is also an important step in our continued efforts to support First American's current title agents and to attract new agents to our company. The real estate industry has devoted a great deal of attention the past year to the concept of a simplified closing package. We believe our Purchase Money Bundle will provide First American and its agents a strong competitive advantage."

First American expects to complete the pilot phase of this program in early January and will be making more information about the Purchase Money Bundle, and other innovative bundling programs, available in the coming months.

The First American Corporation is a Fortune 500 company that traces its history to 1889. As the nation's leading diversified provider of business information, the company supplies businesses and consumers with information resources in connection with the major economic events of people's lives, such as getting a job; renting an apartment; buying a car, house, boat or airplane; securing a mortgage; opening or buying a business; and planning for retirement. The First American Family of Companies, many of which command leading market share positions in their respective industries, operate within seven primary business segments including: Title Insurance and Services, Specialty Insurance, Trust and Other Services, Mortgage Information, Property Information, Credit Information and Screening Information. With revenues of $4.70 billion in 2002, First American has nearly 25,000 employees in approximately 1,400 offices throughout the United States and abroad. The company has its headquarters in Santa Ana, Calif. Information about The First American Corporation's subsidiaries and an archive of its press releases can be found on the Internet at **www.firstam.com**.

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Statement of

Walter T. McDonald, CRS, GRI
2004 President
National Association of REALTORS®

Before the
Committee on Small Business
U.S. House of Representatives
Hearing on HUD's RESPA Reform Proposal
January 6, 2004

Good morning, Chairman Manzullo, Congresswoman Velasquez, and members of the Committee. My name is Walt McDonald and I am the 2004 President of the National Association of REALTORS®. NAR is America' largest trade association, representing 980,000 members who are involved in all aspects of the residential and commercial real estate industries. While our membership is large, our average real estate firm is not. The typical real estate brokerage operates a single office and serves a local market. Sixty seven percent of residential brokerages have a sales force of five or fewer agents. In fact my company is a single office, independently owned and operated company that specializes in property sales, leasing and lending. I appreciate the opportunity to share with the committee today the concerns NAR has over the HUD proposal to reform the Real Estate Settlement Services Act (RESPA).

First let me say what has already been said time and time again but I feel it important to restate. NAR supports efforts to improve RESPA and the home mortgage transaction experience for consumers. We admire former Secretary Martinez's dedication to this initiative and we appreciate and support the stated goals of reform as set forth by the Department: 1) to simplify and improve the process of obtaining home mortgages, and 2) to reduce settlement costs for consumers. However, as we have stated before and continue to believe, there are serious flaws with this proposal as written and therefore will not produce the desired results. In fact, it is possible that such a rule could create more problems than it intended to resolve.

Further, given the obvious controversy and lack of support from industry, consumer groups and Congress, we feel it is important now more than ever that this rule not be finalized in its current form. As you know, even those earlier supporters of HUD's proposal have expressed what we call in the real estate business as "buyers remorse" due to the uncertainty associated with the impact of this initiative. It is our hope that OMB sends this rule back to HUD for additional analysis and review and instructs them to issue a revised proposed rule seeking additional public comment. Otherwise, the changes contemplated by HUD will drastically change the real estate mortgage finance system. Until there are assurances that these changes will

result in real benefits that far outweigh any potential negative consequences, a final rule should not be promulgated. There is too much at stake to rush quickly to judgment on an issue of such magnitude.

HUD said it best in the Supplementary Information Section of the July 28, 2002 proposed rule:

"The American mortgage finance system is justifiably the envy of the world. It has offered unparalleled financing opportunities under virtually all economic conditions to a very wide range of borrowers that, in no small part, have led to the highest homeownership rate in the Nation's history"

I am confident the entire mortgage finance and settlement service industry would agree with HUD. Absent a real need for change, policymakers should not do anything to jeopardize a system that despite its flaws is still working well for most Americans.

We are here today because HUD chose to ignore the ever-growing opposition to its proposal and requests for additional review. Needless to say, we are disappointed in HUD's decision to send their rule to the OMB in final form. While the details of the rule are not yet publicly known, we assume HUD has adopted significant portions of its original proposal, specifically the Guaranteed Mortgage Package (GMP). As reflected in my predecessor's testimony before this committee on March 11, 2003, NAR's longstanding objection to the HUD reform proposal has been largely focused on the GMP. While being characterized as an improvement to the process, the GMP is a radical change to RESPA and removes the most basic consumer protection provision in RESPA, Section 8, the prohibition against kickbacks and unearned fees. It replaces today's competitive environment with one controlled by the largest lenders in the marketplace because HUD's proposal effectively prohibits anyone who cannot guarantee an interest rate from offering packages services to consumers. This alone could lead to devastating results for the consumer, the lending and entire settlement service industry. NAR believes that improvements can be made to RESPA without dismantling the entire mortgage process. For example, NAR has believed that improving the current Good Faith Estimate (GFE) will prove far more beneficial to borrowers and the industry than the wholesale changes of the GMP. Changes should be made incrementally so as not to disrupt the market unnecessarily. In addition, there is nothing in today's rules that prohibit packaging. If lenders want to offer guaranteed pricing, they can package services and market them to consumers. However, they are required to pass along any discounts they may have negotiated with third parties to the borrower. The Section 8 exemption they seek will relieve them of this requirement.

Additional information about the NAR position and our concerns can be found in our testimony of March 11, 2003 (Attachment A). While these concerns are still relevant, I will focus my comments today on more recent developments.

When it became apparent that HUD was not backing off of their GMP rule, our members looked for viable alternatives in an effort to minimize any potential harm to the industry and consumers. As a result, in August 2003, we submitted to Secretary Martinez a proposal that

replaces the single package GMP with a two-package disclosure system. We believe this proposal, while not perfect and certainly deserving of additional analysis, better meets the goals of the GMP without placing non-lenders at a disadvantage or harming consumers. (Attachment B)

A strictly defined two- package approach to reform can offer benefits to consumers by creating a business environment where anyone can package thereby attracting the greatest number of competitors and full disclosure is made to the borrower. The two packages would include a 1) Guaranteed Mortgage Package (GMP) that would include lender only services and can only be offered by the lender, and 2) the Guaranteed Settlement Package (GSP) that would include settlement and other ancillary services that can be offered by anyone, including real estate brokers, title companies, etc. Key elements of a two-package approach is uniformity and transparency through full disclosure. Borrowers must receive simplified cost disclosures and they must be able to make apples to apples comparisons using those disclosures. Therefore, a lender that offers both packages must disclose them separately and not simply market them in one lump sum. Without this requirement, lenders will gain a significant market advantage over non-lenders. Competition will be stifled and borrowers will be unable to make informed decisions.

Many of the problems associated with the single GMP can be alleviated with a two-package system.

Transparency In the Process- In the HUD proposal there is much emphasis placed on creating a transparent process. However, the GMP will result in quite the opposite. Borrowers will shop for a loan based on an interest rate and a "black box" of settlement costs. Consumers want to know what they are getting for their money. If services are not disclosed to the borrower, true comparisons cannot be made. Even in the 1998 HUD/Fed Report, they recommended that *"consumers want to know what services they are purchasing..."* and so they suggested the services in the package be itemized.

Under the two-package proposal, all services in both packages must be itemized and disclosed to the consumer. Packagers will compete not only on price but services as well.

Two packages are better for small businesses- A two-package approach to reform will encourage competition among settlement providers. By creating an environment that does not limit the players, the greatest numbers of entities will compete and consumers will have additional choices in the marketplace and this competition will lower costs.

As you know, HUD's GMP proposal may increase concentration within the industry and therefore reduce competition. Lenders will be provided a financial incentive (Section 8 exemption) to package with no obligation to pass along discounts to borrowers and as a result will control the entire mortgage transaction. Small service providers including real estate brokerages with ancillary services will be at risk. Any regulation that moves an industry toward a more concentrated market structure should be viewed with considerable caution. An increased concentration of powers into the hands of a smaller number of large lenders and service providers could lead to higher closing costs—the exact opposite of HUD's stated goals for reform.

Additional Research and Analysis by HUD is still Needed- We remain convinced that the kinds of changes contemplated by HUD to the mortgage disclosure system require additional study, specifically the need for alternative approaches to the GMP, and the impact on the consumer as well as the industry. Even the twp-package proposal submitted by NAR requires additional scrutiny and debate. Many of the issues that have been raised in the last year and a half have not been addressed in the proposed rule, further underscoring the need for additional public comment.

Not enough is known about the likely impact of the GMP to support advancing this concept at this time. An incremental approach, such as the improved GFE is a more attractive option for satisfying HUD's stated goals for reform. However, even that approach should be more thoroughly reviewed and debated. HUD announced last year that it was conducting consumer testing of new GFE disclosure statements but to-date has not provided the results of these studies. It would be useful to see the results of these studies before making any final decisions. As for packaging, some lenders are already offering guaranteed closing cost packages. They are doing this under today's rules. We believe HUD can create the necessary business environment that will permit packaging to occur without gutting the consumer protections of RESPA.

Conclusion

HUD's GMP proposal assumes an increase in competition will result from the packaging scheme and this competition will drive down prices and benefit consumers. However, we believe this proposal could possibly increase concentration, reduce transparency, reduce the quality of services, and ultimately lead to higher closing costs.

Much has changed since HUD first introduced their proposal in July of 2002. The most significant being the lack of support for the proposal from almost every housing and mortgage finance and consumer group. Without consumer or industry support it is questionable why HUD feels compelled to move forward with this proposal. It is in the best interest of all for HUD to revisit this issue, review the comments and recommendations to date, and to submit a revised proposal for additional public comment. There is much to gain by an open and inclusive process and much to lose if acted on too quickly.

There should be further analysis and development of a two-package approach to the GMP. Unless there is a real opportunity for providers other than lenders to offer packaged settlement services to consumers, the negative consequences of HUD's proposed GMP will far outweigh any potential benefits to consumers.

Furthermore, we believe Congress should be consulted before any final action is taken. We are very supportive of these Congressional hearings and would like to serve as a resource as the Committee continues to review this proposal. There is too much at risk to move forward in a less than thoughtful and deliberative manner.

I thank you for the opportunity to present the views of the National Association of REALTORS and I look forward to your questions.

TESTIMONY OF

R. MICHAEL MENZIES, SR.

on behalf of the

INDEPENDENT COMMUNITY BANKERS OF AMERICA (ICBA)

before the

COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

January 6, 2004

Chairman Manzullo and members of the Committee, my name is R. Michael Stewart Menzies, Sr. and I am pleased to have the opportunity to testify before you today on behalf of the Independent Community Bankers of America (ICBA)[1] and its nearly 4,600 community bank members, to share with you our views on the Department of Housing and Urban Development's (HUD) proposed Real Estate Settlement Procedures Act (RESPA) rule. I serve as President and CEO of Easton Bank and Trust Company, a $ 100 million bank located in Easton, MD. We hold approximately $20 million of residential loans in portfolio. I also serve on the board of directors of ICBA's subsidiary, ICBA Mortgage, which facilitates banks selling mortgages into the secondary market.

ICBA would like to express its appreciation to Chairman Manzullo for calling this hearing during the congressional recess in light of HUD's transmittal of the final rule to OMB and the uncertainty over what the rule contains and how it will affect the mortgage market that has played such an important role in our economy. Mr. Chairman, we share your concerns about the effects of the rule on small business and in particular, small lenders.

Our testimony will address the rule as proposed, since parameters of the final rule transmitted to OMB are not known. On October 28, 2002, ICBA responded to the invitation to comment on the proposed rule, and submitted an extensive letter to HUD, a copy of which is attached for your reference.

ICBA strongly opposes the proposed rule because of the damage it will do to consumers, the mortgage finance system and small loan originators and small settlement service providers that participate in it. We believe the rule will create an environment where the largest originators and settlement service providers will drive out the smallest, and we are concerned about the ability of smaller banks and service providers to compete against the larger market participants.

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[1] *ICBA is the nation's leading voice for community banks and the only national trade association dedicated exclusively to protecting the interests of the community banking industry. ICBA has 4,600 members with branches in 17,000 locations nationwide. For more information, visit www.icba.org.*

Larger market participants have a greater ability to negotiate volume discounts for services within the package than do smaller participants because of their size. The result will be less competition, less consumer choice and higher mortgage costs.

ICBA and its members place a high value on the importance of homeownership. Our current mortgage finance system has enabled a record number of Americans to realize that dream, and we fully support the administration's goal to further increase minority homeownership by 5.5 million families. It is a simple fact that the lower the costs of obtaining a mortgage, the more affordable homeownership becomes.

HUD's proposed rule has been presented as an attempt to simplify and improve the process of shopping for mortgage loans with the three main objectives being to: (1) improve the existing RESPA disclosure scheme; (2) remove regulatory barriers to enable the offering of packages of settlement services to borrowers; and (3) fundamentally change the way in which mortgage broker compensation is reported.

While the ICBA is a proponent of simplifying the mortgage loan process, and giving borrowers more choices, we have serious concerns with the proposed rule, because it will seriously undermine the mortgage finance process, and reverse the trend of overall homeownership growth. We firmly believe that should this rule be adopted as it stands, it will, at a minimum, result in borrower confusion, hidden fees, increased settlement costs, and fewer credit and settlement service options as small lenders and brokers and small settlement service providers are driven from the market because they simply will not be able to negotiate the necessary discounts from settlement service providers to compete with larger institutions -- in short, a serious disruption of the mortgage finance system.

You have asked for comments about HUD's process and procedures in developing the rule. Based on what we have seen, we fear that HUD's proposal overlooks the adverse impact of the rule on small businesses and small lenders. In its economic analysis accompanying the proposed rule, HUD simply states that it is difficult to reach a firm conclusion about the magnitude of the impact on small lenders, but acknowledges that a significant portion of cost transfers related to the Guaranteed Closing Cost Package would be to their detriment. HUD makes the unsupported assumption that these institutions are charging high prices for their services.

Bank Call Report data shows that banks with under $5 billion in assets—small institutions by size but the majority of insured depository institutions by number—hold close to $300 billion in mortgage loans in portfolio and have sold additional loans into the secondary market. While, this is a relatively small segment of the overall residential mortgage market, it represents residential mortgage loans

made in communities large and small, and in urban, suburban and rural communities across the country. We find it difficult to believe that the majority of insured depository institutions are charging "high prices" for their services as HUD concludes in its analysis.

Implementation Costs
While HUD provides some estimates of cost savings it expects the proposal will bring, notably absent from HUD's economic analysis is a discussion of the cost to implement such dramatic changes to the mortgage industry that its proposed regulation would cause. Significant costs will be incurred related to the training of loan originators, and brokers, underwriters, compliance officers, information system changes, and document changes. While these would generally be one-time costs that would result should HUD issue a final rule substantially the same as its proposal, the costs would be passed to consumers over time and need to be factored into the analysis.

Costs to Package
HUD expects cost savings will be realized as companies spring up to package settlement services for resale to lenders, yet the introduction of the new packager layer will add additional costs as they will require compensation for their service, compensation that will cut into the cost savings HUD expects to benefit consumers. Also, lenders or originators that chose to use a third party vendor will need to conduct due diligence on the vender to ensure that it can truly perform its duties in providing settlement services. There will be costs associated with this process.

We continue to maintain, as we did in our comment letter to HUD, that if HUD goes forward with the final rule without significant changes, smaller loan originators and settlement service providers will not be able to compete to the detriment of the consumer. We find it odd that HUD, whose mission is to promote homeownership, support community development and increase access to affordable housing free from discrimination appears unconcerned that its proposed RESPA amendments may well decrease available credit options offered by small lenders and force out small businesses that provide settlement services in their local communities.

If HUD has indeed listened to the many concerns about its proposed RESPA amendment voiced by all sectors of the industry and thus has made significant changes to the proposal, we strongly believe that it should be published for public comment once again.

The remainder of our testimony addresses the following areas covered by the proposed rule: HUD's Good Faith Estimate (GFE) settlement cost disclosure; Guaranteed Mortgage Packages; and Mortgage Broker Compensation.

HUD's Good Faith Estimate Settlement Cost Disclosure

The proposed rule also calls for a change in the existing RESPA disclosure scheme through a new format for the Good Faith Estimate (GFE). The goal is to create a consumer friendly form providing borrowers with more useful and accurate information to assist them in the mortgage finance process. The rule proposes more precise cost estimates than what is currently required. These estimates would be grouped by category with a zero tolerance level for some items, except in the event of unforeseeable and extraordinary circumstances, and a ten percent tolerance level for others. While HUD considers this an enhancement to aid the borrower, we believe it will affect both borrower and lender by ultimately resulting in an increase to the cost of loan packages, and will negatively impact the ability of community banks to compete in this arena.

Certain costs are much easier for loan originators to estimate than others, and certain costs set by third parties are difficult for a lender to guarantee. For example, loan originators generally know, with certainty, the cost of a credit report. However, situations often arise for consumers with unusual credit histories when additional information must be verified causing the costs to unexpectedly increase. This may especially be the case with recent immigrants or minorities who do not have traditional credit histories, the very individuals the Bush administration is trying to reach, and the very individuals who reside in the communities served by our member banks. Similarly, a loan originator may order a property survey or appraisal expecting that, based on experience, it will cost a certain amount that can be guaranteed, but find that once work has begun, the property requires additional surveys or appraisals at an additional cost. Both of these are examples of costs that under the proposed rule would fall in the zero tolerance rate category, and would, therefore, have to be guaranteed by the loan originator who would also be required to absorb any and all unexpected or additional costs. Aside from the two previous examples, there are several other zero or ten percent tolerance rate items that may vary depending on the final loan amount and closing date, both of which can change at the request of the borrower, yet any resulting increase in costs will again be absorbed by the lender. This will naturally result in loan originators increasing the costs of packages to all borrowers to guard against such contingencies

Moreover, all service providers do not charge the same amount for their services. Our community banks generally use the lowest cost provider. However, for reasons beyond the bank's control, that may not always be possible. There will be times when the preferred provider is unavailable or too busy to ensure that the requested work is completed according to the borrower's schedule. The precise cost estimates and guarantees required under the proposed rule will place banks between the proverbial rock and a hard place. They will either have to quote the

highest rates and price themselves out of the competitive mortgage finance market or attempt to remain competitive while running the real risk of having to absorb those unexpected and additional costs. We believe that the firmness of the cost estimates proposed by HUD does not adequately reflect the variances that legitimately occur in the industry. Loan originators should be required to document changes to justify increases in the cost of items at settlement, but locking them into fees at the application phase can only result in increased costs.

Finally, the instructions to "Attachment A-1" of the revised forms requires loan originators to itemize services that the borrower can shop for, and estimate the cost of these services ". . .based on local market averages for the areas where the property is located." It is our view that the requirement to collect and maintain data to determine market averages is an unreasonable and burdensome expectation, particularly for small originators located in large metropolitan areas. We believe a better approach would be to require that the originator insert the estimated cost of the service as if they were providing it.

As you can see, the proposed enhancement to the GFE will impact both borrowers and originators in a manner that will be contrary to the rule's objectives.

Guaranteed Mortgage Packages

The proposed rule seeks to facilitate mortgage shopping and promote competition by removing the regulatory barriers to allow a safe harbor under RESPA for Guaranteed Mortgage Package transactions. A Guaranteed Mortgage Package (GMP) consists of a mortgage loan with a guaranteed interest rate and a package of settlement services required by the lender to close the mortgage. The settlement services would include, but are not limited to, all application, origination and underwriting services, the appraisal, pest inspection, flood review, title services, title insurance and any other lender required services except hazard insurance, per diem interest and escrow deposits.

Unlike the GFE, a GMP would not itemize the specific services to be provided. HUD believes that the GMP will make it easier for borrowers to shop for mortgages through simpler more transparent transactions, and will further reduce settlement costs as a result of market forces, borrower shopping and competition. It is our position that the GMP will take away the borrower's opportunity to shop for those items included in the package. Further, because all services are packaged, there would be no assurance to the borrower as to what will and will not be provided. This will, in effect, eliminate comparison shopping, one of the essential elements of the process that this rule seeks to promote.

In addition to the package of settlement services, a GMP must include a guaranteed interest rate that is tied to an observable index or other appropriate

means that would assure borrowers that if the lender increased the rate, it was not driven by the lender's desire to increase its origination profits. This proposed change is simply unreasonable in that it does not reflect the realities of the mortgage industry, and how interest rates are set and how quickly they can change in the course of a day. The rule also assumes that lenders and brokers control the interest rates they offer which, in most situations, is simply not the case. Interest rates offered by community banks are often set by the secondary market organizations or lenders that purchase the loans. HUD's proposal that brokers or lenders guarantee rates without any type of financial commitment from the consumer while the consumer is free to shop for the best package, unreasonably exposes the brokers and lenders to interest rate risk. The cost of this risk will either be borne by the banks or the borrowers. To protect itself against interest rate risk the institution will incur additional expenses that can be recouped only if the consumer returns for the loan, or consumers may bear the cost of higher rates imposed by the institution.

Further, the requirement that loan originators must post and constantly update mortgage rates on their website would be very costly and highly burdensome for community banks. First, not all community banks have websites, and secondly of those that do, few offer the ability to apply for mortgage loans. ICBA recently completed its 2003 Annual Community Bank Technology Survey.[2] Seventy seven percent of community banks responding maintain an Internet site, and of that group, seventy five percent offer some banking services through the site. However, most services offered by community banks through internet websites relate to account information with only about twenty two percent of respondents indicating that they offer their customers the ability to apply for loans through their website. Therefore, it appears that the larger lenders are in a better position than many community banks to comply with the proposed interest rate posting requirement.

Loan originators should not be forced to make unnecessary and expensive expenditures for technology. Requiring lenders to post an interest rate index is impractical, and may not serve as a reliable tool for consumers. Some loan originators offer only a handful of loan products, while others may have dozens of products and rates. Moreover, interest rates can change within a day during volatile periods. The effect of compliance on smaller financial institutions would be enormous, and would force many to exit the market altogether. The significant resources that would be needed to maintain current data, could be better allocated to originating and processing mortgage loans and marketing to minority and low- and moderate-income families and first time homebuyers. Finally, to allow packagers to offer the GMP, the rule provides a safe harbor from RESPA Section 8. Therefore, the very provisions that were developed to protect consumers from special fee arrangements between settlement service providers

[2] The survey was sent to over 9,000 community banks with over an eleven percent response rate. Those banks responding had an average asset size of $143.5 million.

and loan originators do not apply. Proponents of this safe harbor provision believe that it is necessary in order to offer the GMP and lower mortgage costs. However, nothing in the proposed rule indicates that the cost savings would be passed along to the borrower. ICBA views this as a complete policy reversal, that exposes the mortgage finance system to the risk that we will return to the environment of abusive practices that RESPA Section 8 was originally designed to prohibit.

ICBA has repeatedly raised concerns about the effect the HUD proposal will have on the ability of smaller banks and service providers to compete against the larger market participants. We agree with HUD's premise that consumers benefit when they have choices. However, it is clear that the proposed rule will eliminate consumer choice in that the smaller, and lower volume generating lenders, brokers and settlement service providers will be driven from the market because they simply will not be able to negotiate the necessary discounts from settlement service providers to compete with the larger institutions in offering GMPs. We strongly believe that is it wrong for a government agency to regulate institutions out of an industry simply because of their size. This is clearly a rule that favors the largest institutions in the mortgage industry.

Community banks are also concerned that the GFE and GMP requirements will limit their ability to provide early credit counseling, and to offer alternative products that may better suit the borrower's needs. Should HUD feel compelled to move forward with the GMP, it should only do so as a test while making no changes to the current GFE. Currently, several institutions are marketing versions of a guaranteed package. We see this as the best way to proceed – allow the market to continue its evolution without regulatory mandates to package.

Mortgage Broker Compensation

Finally, the proposed rule calls for a change in the manner in which lender payments to brokers are recorded and reported to consumers. Specifically, the rule would require that for loans originated by mortgage brokers, any payments from a lender based on a borrower's transaction, would be reported on the Good Faith Estimate (GFE), and the HUD-1/1A Settlement Statement as a lender payment to the borrower, including payments based on an above par interest rate on the loan (including yield spread premiums). Similarly, any borrower payments to reduce the interest rate (discount points) in brokered loans must equal the discount points paid to the lender, and be reported as a borrower payment to the lender. HUD believes that this change will resolve disputes regarding broker compensation, and improve the process of obtaining a home mortgage.

ICBA fully supports disclosure of broker compensation in mortgage loan transactions. However, it is our view that this proposed change would neither

resolve the current broker compensation issues, nor accomplish the goal of improving the process. Reporting broker compensation as proposed will not result in a simpler more transparent process, but will instead result in more confusion for the borrower. We believe that retention of the existing disclosure requirements would prove far less confusing.

Conclusion

In conclusion, the ICBA has grave concerns that HUD's proposed changes to RESPA will seriously undermine the mortgage finance process, and reverse the trend of overall homeownership growth. While HUD believes this rule will simplify and improve the process of shopping for mortgage loans, ICBA feels strongly that this will not be the case. This proposal will dramatically alter the manner in which mortgages are offered, making the process more confusing, impacting consumer choice in the selection of individual settlement services, and decreasing consumer options for mortgage products. It will also inevitably create an environment where the largest originators and settlement service providers will drive out the smallest.

If this rule is adopted, it will result in a serious disruption of the mortgage finance process, and increase, not decrease as HUD predicts, the cost of homeownership. ICBA opposes the proposed rule because of the damage it will do to consumers, the mortgage finance system, and the small loan originators and settlement service providers that participate in it. If HUD has significantly changed its proposal, the public should have another opportunity to comment on it before it is published as a final rule because of the dramatic affect it will have on the mortgage industry and how consumers seek mortgages. We urge Congress to address our concerns about the rule during its 60-day review period.

Thank you for the opportunity to submit testimony today. ICBA stands ready to work with the Committee on this important issue.

INDEPENDENT COMMUNITY BANKERS of AMERICA

January 5, 2004

Rules Docket Clerk
Office of General Counsel
Room 10276
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-0500

RE: Real Settlement Procedures Act (RESPA): Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers

Dear Sir or Madame:

The Independent Community Bankers of America (ICBA)[1] welcomes the opportunity to comment on the rule proposed by the Department of Housing and Urban Development (HUD) that would amend the regulation implementing the Real Estate Settlement Procedures Act (RESPA). HUD's proposal is intended to simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers.

In the proposal's preamble, HUD states that to simplify and improve the mortgage loan process, the proposal addresses the issue of loan originator compensation, specifically lender payments to mortgage brokers, by fundamentally changing the way in which these payments are recorded in brokered mortgage transactions and reported to consumers. The proposal would significantly enhance HUD's Good Faith Estimate (GFE) settlement cost disclosure and HUD's related RESPA regulations, presumably to make the GFE firmer and more usable, to facilitate shopping for mortgages, to make mortgage transactions more transparent, and to prevent unexpected charges to consumers at settlement. The proposed rule is intended to promote competition by removing regulatory barriers to allow a safe harbor under RESPA for Guaranteed Mortgage Package (GMP) transactions that include a package of settlement services and a mortgage loan with a guaranteed

[1] ICBA is the nation's leading voice for community banks and the only national trade association dedicated exclusively to protecting the interests of the community banking industry. ICBA has 5,000 members with branches in 17,000 locations nationwide. Our members hold nearly $511 billion in insured deposits, $624 billion in assets and more than $391 billion in loans for consumers, small businesses, and farms. They employ more than 231,000 citizens in the communities they serve.

interest rate to simplify shopping by consumers and further reduce settlement costs. The proposed rule also includes revised disclosure forms.

General Comments

While HUD states this proposal will simplify and improve the process of shopping for mortgage loans and settlement costs for consumers, the ICBA strongly believes that, unfortunately, this will not be the case. In our view, elements of the proposal will further confuse consumers, enable dishonest brokers and lenders to hide unnecessary fees and overall increase mortgage costs. GFEs and GMPs must be provided without compensation for the work needed to provide them and only minimal compensation may be received for the work performed to provide the GMPA. Loan originators will need to increase costs overall to offset this burden. In addition, ethical smaller loan originators and settlement service providers will be driven from the mortgage industry because they will not have the volume necessary to compete if this proposal is adopted and consumer choice will be reduced. Clearly, if HUD goes forward with its proposal, as it exists, the advantage goes to the largest loan originators and settlement service providers, to the detriment of the smallest market participants and consumers.

ICBA has long held that real estate mortgage transaction disclosures should be simple and easy to understand, clearly specifying the obligations and responsibilities of all parties. Disclosures should focus on the information consumers want most: the principle amount of the loan, the simple interest rate on the promissory note, the amount of the monthly payment and the costs to close the loan. Information should be provided to consumers at the appropriate stage of a transaction to allow them to make informed decisions. ICBA supports one set of rules for all mortgage lenders, and regulation, supervision and enforcement must be consistent across the industry.

President George W. Bush has called for an increase in minority homeownership by 5.5 million families, a goal that HUD Secretary Mel Martinez has strongly supported and a goal that ICBA strongly supports. ICBA became a charter member of the Homeownership Alliance[2] because of the high value our members place on the importance of homeownership and the need to promote it. We recognize that the lower mortgage costs are, the more affordable homeownership becomes. But we have grave concerns that HUD's proposed changes to RESPA will seriously undermine this goal and reverse the trend of overall homeownership growth. HUD's proposal will dramatically alter the manner in which mortgages are offered, making the process more confusing, removing consumer choice in the selection of individual settlement services, and

[2] The Homeownership Alliance is an organization dedicated to preserving, promoting, and expanding housing opportunities for all Americans. At the start of the 21st century, there are many positive and negative developments that can affect access to the American dream. The Homeownership Alliance is dedicated to supporting those positive developments and to exposing and defeating trends that would harm consumer access to affordable housing.

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decreasing consumer options for mortgage products. If the proposal goes forward, it will increase, not decrease as HUD predicts, the cost of homeownership. As flawed as the current system may be, it has created an environment that has enabled a record number of Americans to realize the American Dream of homeownership. We strongly urge HUD not to go forward with this proposal in its current form because of the damage it will do consumers, the mortgage industry and the small loan originators and businesses that support it.

We strongly believe there are better ways to address the problems that exist in the current system, such as better enforcement of current laws and better consumer education. HUD should enhance its "Special Information Booklet" for consumers to provide more educational information and questions for consumers to ask as they shop for mortgage loans and settlement services. The Bush administration is working hard to promote financial literacy, using resources such as the Federal Deposit Insurance Corporation's "Money Smart" program. ICBA has committed to be part of this effort which will help consumers better understand how to obtain and manage credit and how to become a homeowner. Consumers need to shop to identify the best overall mortgage option for them, but we do not see this proposal promoting shopping any more than the current system. The following provides more specific comments on elements of the proposal.

Specific Comments

Definition of Mortgage Broker
The proposed rule defines a mortgage broker as a person or entity that renders origination services in a table funding or intermediary transaction. Where a mortgage broker is the source of the funds for a transaction, the mortgage broker would be defined as the lender. By this definition, many community banks would be considered to be mortgage brokers for some, but not necessarily all, mortgage loans that they make available to their customers. In some situations a community bank may make and hold a loan in portfolio that does not conform to secondary market standards and therefore it acts as a lender. In other situations, a loan will confirm to secondary market standards and be sold to Fannie Mae or Freddie Mac or to a conduit program, such as that offered through ICBA's subsidiary, ICBA Mortgage (formerly IBAA Mortgage). In this situation, the community bank acts as a broker. Thus, our comments are provided from the perspective of institutions that may act in the role of lender or broker and the term "lender" or "loan originator" in this letter refers to such a bank.

Guaranteed Closing Cost Package
The proposal calls for two methods by which closed-end mortgage loans may be offered, a GMP and an enhanced GFE. HUD proposes a new GMP that includes a guaranteed interest rate and one aggregate fee for settlement services required to complete a mortgage loan. Within 3 days of the borrower's application, the packager would provide the borrower a GMP offer, subject to final underwriting. The GMP offer would be open for a minimum of 30 days. The borrower may not be charged for the GMP; a "minimal" fee may be charged after the borrower agrees to the package and signs a Guaranteed Mortgage Package Agreement (GMPA).

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HUD proposes to establish a safe harbor under RESPA for guaranteed closing cost packages. Any entity (a lender, broker, other settlement service provider, or other entity) may qualify for the safe harbor as long as it offers a GMP to a borrower following their submission of application (as defined by HUD) information but before any payment of a fee. The package would include a mortgage loan and virtually all other settlement services required by the lender to close the mortgage (including without limitation, all application, origination and underwriting services, the appraisal, pest inspection, flood review, title services and insurance and any other lender required services except hazard insurance, per diem interest and escrow deposits).

The package also must include a mortgage loan with an interest rate guarantee, when the GMPA is given or subject to change (prior to borrower lock-in) only pursuant to market changes evident from an observable and verifiable index or other appropriate data or means.

The GMP would include all services required by the lender to close the mortgage but would not itemize the specific services to be provided. The packager would be required to inform the borrower if certain items of interest to the borrower are anticipated to be excluded from the package, specifically lender's title insurance, pest inspections and a property appraisal. Where the packager anticipates obtaining a pest inspection, appraisal, or credit report, the packager must disclose that information and make such reports available at the borrower's request. The HUD-1 would list the services provided, but not their specific charges.

In our view, the GMP approach takes away the opportunity to shop for items in the package that consumers currently enjoy. All services would be lumped in one package, with minimal assurance to the consumer of what will and will not be provided. This will make it difficult for the consumer who comparison shops to truly compare packages and determine which offers the best value. Also, consumers will find it difficult to shop a loan with its costs itemized on a GFE with one that is part of a GMP where information is limited about what services will be in the package and what they cost. The proposal prevents any meaningful comparison of the two options.

The concept of a guaranteed closing cost package has been discussed by industry representatives, including ICBA, for several years. ICBA has repeatedly raised concerns about the ability of smaller banks and service providers to compete against larger market participants that have the ability to negotiate reduced costs for the components of the packages. We agree with HUD's premise that consumers benefit when they have choices, but this proposal will remove mortgage options as it drives from the market smaller lenders, brokers and settlement service providers that simply will not have the volume to negotiate the level of discounts need to compete with the larger lenders and settlement service providers. Clearly this proposal favors the largest institutions in the mortgage industry. We strongly believe that it is wrong for a government agency to regulate institutions out of a market simply because of their size.

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Packagers
ICBA believes that any organization, not just lenders, should be permitted to package settlement services. This should include the "housing" Government Sponsored Enterprises: the Federal Home Loan Banks, Fannie Mae and Freddie Mac. Should HUD go forward with its proposal regarding guaranteed packages, smaller lenders may need to seek packaging assistance from these agencies to remain viable competitors to serve underserved communities, particularly rural areas.

Enhanced Good Faith Estimate
The proposal contains a second way to offer mortgage loans by disclosing related costs in an enhanced GFE. The cost estimates are grouped by categories but are required to be much more precise then the current GFE requires. Some GFE items have a zero tolerance, except in the event of unforeseeable and extraordinary circumstances, while others have a 10 percent tolerance level. Items that are shoppable by the borrower can exceed the estimate if the borrower chooses a more expensive service.

Some charges, such as origination costs, can be estimated and guaranteed. However, other costs, such as those set and controlled by third parties, are more difficult for a loan originator to guarantee. Loan originators generally know with certainty the cost of a credit report, but situations arise when more work needs to be done to verify information for consumers with unusual credit histories and the cost may unexpectedly increase. This may especially be the case with recent immigrants or minorities that do not have traditional credit histories, the very individuals the Bush administration is attempting to reach. A loan originator may order a property survey or appraisal, expecting that it will cost a certain amount that can be guaranteed up front based on historic experience and find that once work has begun the property requires additional survey or appraisal work at an additional cost. This can happen for example, where the property is described by metes and bounds rather than lot numbers, or where the features of the property require different or additional appraisal analysis such a mixed-use rural property. In both of these examples, these are costs that loan originator will have to guarantee with a zero tolerance, and through no fault of its own, will be forced to absorb the unexpected additional cost. To make leeway for these unexpected costs, loan originators will increase the cost of packages to <u>all</u> borrowers.

Service providers do not all charge the same amount. Community banks have told ICBA that they generally try to use the lowest cost provider, but that may not always be possible, for reasons beyond the bank's control. The preferred provider may be too busy to ensure that work is complete by the borrower's desired closing date. Always quoting the highest rate may make them non-competitive, but if the bank does not quote the highest rate, it must absorb the extra cost in the event the higher cost provider must be used.

Several of the items for which HUD proposes a zero or 10 percent tolerance rate may vary depending on the final loan amount and closing date, which can change at the request of the borrower and thus are not factors over which the lender or broker has

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control. If a borrower decides to increase their loan amount, or change the closing date, any resulting increase in costs could not be passed on to the borrower.

We believe that the firmness of the cost quotes proposed by HUD does not adequately reflect the variances that legitimately occur in the industry. Further, Congress also saw the need to allow flexibility as it considered legislative changes to RESPA in the 1970s and rejected advance disclosure of actual costs in favor of an estimate of the amount or range of charges for specific settlement costs. We believe that loan originators should document changes to justify increases in the cost of items at settlement, but locking them into fees at application can only increase costs as lenders raise overall fees to cover unanticipated circumstances.

In the instructions to "Attachment A-1," HUD requires loan originators to itemize services that the borrower can shop for and estimate their cost "based on local market averages for the areas where the property is located." In our view, the requirement to collect and maintain data to determine market averages is an unreasonable, burdensome expectation, particularly for smaller originators located in large metropolitan areas. A better approach would be to require that they insert the cost of the service as if they were providing it.

ICBA is concerned that lumping costs together in large categories will further confuse consumers during shopping when they attempt to compare GMP offers with GFEs and later when comparing data on the GFE with data on the HUD 1/1A. HUD has pointed out that it wishes to facilitate shopping and increase certainty about final costs at the settlement table. We do not see that recategorizing items will successfully address these goals.

Disclosure of Broker Compensation

For loans originated by mortgage brokers, any payments from a lender based on a borrower's transaction, other than a payment to the broker for the par value of the loan, including payments based on an above par interest rate on the loan (including yield spread premiums), would be reported on the GFE (and the HUD-1/1A Settlement Statement) as a lender payment to the borrower. Any borrower payments to reduce the interest rate (discount points) in brokered loans must equal the discount points paid to the lender and be similarly reported as a borrower payment to the lender. Thus, mortgage brokers would be required to disclose the maximum amount of compensation they could receive from a transaction, by including the amount in the "origination charges" block of the GFE and indicate the amount of the lender payment to the borrower that would be received at the interest rate quoted, if any.

ICBA supports disclosure of broker compensation. In our view, retaining a disclosure similar to the existing one would be far less confusing for the borrower. We expect that showing broker compensation as a payment from the lender to the borrower will simply confuse the borrower further and not resolve the broker compensation issues that HUD intends to address.

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RESPA Safe Harbor
HUD proposes a safe harbor from RESPA Section 8 so that volume discounts could be obtained and closing cost packages could be offered. In our view, HUD's proposal simply reverses the provisions contained in RESPA Section 8 that were developed to protect consumers from special fee arrangements between settlement service providers and loan originators. Over the years, HUD has made progress in providing guidance to lenders, brokers and settlement service providers about what they can and cannot do to earn compensation. In the early 1990s HUD issued a letter to ICBA (formerly the Independent Bankers Association of America or IBAA) clarifying the relationship between fees and services performed. HUD later expanded this guidance. Some say a safe harbor is required to offer guaranteed closing cost packages to lower mortgage costs. Yet, there is no guarantee that these cost savings would be passed on to consumers. Instead, we risk returning to an environment of abusive practices that RESPA Section 8 was designed to prohibit.

Guaranteed Interest Rate
To qualify for the safe harbor, the packager must include an interest rate guarantee with a means of assuring that when the rate floats, it reflects changes in the cost of funds and not an increase in originator compensation. Thus, HUD suggests that the rate be tied to an observable index or other appropriate means that would assure borrowers that if the lender increased the rate, it was not to increase origination profits.

HUD's proposal regarding guaranteeing an interest rate that is tied to an index is simply unworkable as it does not reflect the realities of the mortgage industry and how interest rates are set and how quickly they can change in the course of a day. Also, HUD assumes that lenders and brokers control the interest rates they offer, which is simply not the case in most situations. Interest rates that community banks offer are in many cases set by the secondary market organization or lender that purchases the loans. HUD's proposal that brokers or lenders guarantee rates without any type of financial commitment from the consumer while the consumer shops for the best package exposes the brokers and lenders to interest rate risk that the institution must incur expense to hedge against. This is a cost that the lender could recoup only if the consumer returns for the loan, or a cost that other consumers must bear in higher rates and other costs to cover the risks HUD would impose on loan originators.

Requiring loan originators to post and constantly update mortgage rates on their website as a control would be very costly and burdensome for community banks. Not all community banks have websites. ICBA recently completed its 2002 Annual Community Bank Technology Survey[3], which found that 73 percent of community banks responding maintained an Internet site and of that group, 74 percent offer some banking services through that site. Most services offered through their website relate to account information with only about 30 percent of respondents indicating they offer the ability to apply for loans over the site. Few if any of community banks currently have the capability to maintain current interest rates on their websites. ICBA has worked with

[3] The survey was sent to over 9,000 community banks with over a 10 percent response rate. Those responding had an average asset size of $160 million.

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companies providing website offerings such as HUD suggests, but we have found that often the purchase and maintenance is too cost prohibitive, particularly for community banks that have a relatively low mortgage volume. Larger lenders are in a far better position to comply with any interest rate posting requirements that HUD would impose. HUD's proposal should not become an unfunded mandate that forces loan originators to make unnecessary and expensive expenditures for technology.

More importantly, because of the way the mortgage industry operates, requiring lenders to establish a postable index for comparison is impractical and may not serve as a very reliable comparison tool. While some loan originators only offer a handful of loan products and rates, more active participants may have dozens of rates to offer, depending on the particular loan product. Interest rates can change within a day during periods of volatile interest rates. Smaller financial institutions would find that they need to dedicate significant resources to keeping the data current, resources that could be better used in making and processing mortgage loans. Others would find the task so daunting that they would exit the mortgage market altogether, thereby decreasing competition and consumer options.

Loan Rejections

The GFE and GMPA would be provided to the borrower, subject to appraisal and underwriting. HUD has asked how to address the matter of loan rejection or threatened rejection as a means of allowing the originator to change the GFE or GMPA simply to earn a higher profit. A loan originator would be required, if it is able and upon the borrower's request, to offer an alternative loan product, with a new GFE, if after full under writing, the borrower does not qualify for the loan identified on the original GFE. The proposal would require loan originators to provide qualified borrowers with an amended GFE, identifying any changes in costs associated with changes in the interest rate, where the borrower elects not to lock-in the interest rate quoted on the original GFE at the time it is provided but later comes back to the originator for the loan.

No matter what the final regulation looks like, there will be creative, unethical loan originators and settlement service providers that will seek to earn a higher profit by "gaming" or ignoring the requirements. Strong enforcement is needed to catch such loan originators. Community bankers are concerned about the number of times a GFE may need to be amended for very small changes. They are also concerned that the GFE and GMPA requirements may limit their ability to offer alternative products that may better suit the borrowers needs and to provide credit counseling early in the process.

Conflicts with TILA and Other Laws and Regulations

ICBA sees a number of conflicts between HUD's proposal and existing laws and regulations. In its proposal HUD, uses a definition of "application" that is different from that used in regulations issued by other agencies overseeing parts of the lending process, i.e., the Federal Reserve's Regulation B or requirements under the Fair Credit Reporting Act. Information about settlement costs is lumped together on the GMPA, information that needs to be split out for APR calculations. The Federal Reserve has only recently revised Regulation Z, 12 CFR 226.32, to help deter predatory lending. One of the

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triggers under the Federal Reserve's rule is based on the amount of certain fees that are included in the finance charge. However, because the fees would be lumped together in the GMPA, assessment of whether the Federal Reserve's requirements have been triggered would no longer be possible. HUD has questioned whether the package option should be available for these loans ("HOEPA" loans) —but the proposal would make it impossible to determine all loans that are subject the Federal Reserve requirements. We urge HUD to work closely with banking regulators and others to ensure that all regulatory conflicts are resolved before it moves forward with its proposal, lest it put lenders in the untenable position of not being able to comply with all applicable regulations.

Test of GMPA and the GFE
Should HUD feel compelled to move forward with the GMPA, it should do so only as a test while making no changes to the current GFE. Currently, several institutions are marketing versions of a guaranteed package. We see this as the best way to proceed—allow the market to continue its evolution without regulatory mandates to package.

Also, should HUD move forward with any significant changes, we strongly urge it to provide a lengthy implementation period, particularly in a low interest rate environment where mortgage industry participants are extremely busy. Not only will loan originators and settlement service providers need time to understand new regulatory requirements, revise documents and procedures, train staff, etc., consumers will also need a great deal of education about how the mortgage lending process will change and how to understand the disclosures.

ICBA is also concerned that HUD has limited enforcement powers over the regulatory changes it proposes. Thus, regulated financial institutions such as banks and thrifts will see enforcement during the examination process. Yet, many other market participants will face little or no enforcement.

Conclusion
While ICBA has long been a proponent of simplifying the mortgage process, we are very concerned that if HUD moves forward with its proposal, it will seriously disrupt the mortgage market, raise costs to consumers and create a competitive environment where the largest originators and settlement service providers drive out the smallest. We strongly support HUD's goals to encourage consumers to shop and to lower mortgage costs. Unfortunately, we do not see that this proposal would accomplish those goals.

The homeownership rate in America is at a record level and the Bush administration has aggressive plans to increase it, particularly for minorities and immigrants. In our view, HUD's proposal would put this effort in great jeopardy. We urge HUD to instead focus its efforts on consumer education and uniform enforcement.

We appreciate the opportunity to comment.

Sincerely,

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Dale J. Torpey

Dale J. Torpey
Chairman,
Lending Committee

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Statement of Regina M. Lowrie

President & CEO
Gateway Funding Diversified Mortgage Services
Fort Washington, PA

on behalf of

Mortgage Bankers Association

before the

Committee on Small Business

U.S. House of Representatives

Hearing on

"Real Estate Settlement Procedures Act Regulations: Working Behind Closed Doors to Hurt Small Businesses and Consumers"

January 6, 2004

Good morning Mr. Chairman and members of the Committee. My name is Regina Lowrie, and I am President and CEO of Gateway Funding Diversified Mortgage Services, in Fort Washington, Pennsylvania. Today, I appear before you as Vice-chairwoman of the Mortgage Bankers Association (MBA).[1] MBA's membership consists of approximately 2,700 companies, and includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field.

I commend the Chairman's leadership in calling for hearings on the very crucial matter of the pending HUD regulations aimed at simplifying Regulation X, the rules which implement the Real Estate Settlement Procedures Act (RESPA). I also commend the Chairman for focusing on the concerns of small business entities. MBA shares those concerns. A major portion of our membership is composed of small business entities—both brokers and lenders—and we care deeply about the effects of this rulemaking on their operations and activities, as well as on consumers.

I'll start by summarizing MBA's views on this subject. MBA supports reforming the laws that govern mortgage lending in order to give consumers and our members a simpler and more straight-forward process. We urge, however, that reforms be done correctly, through improvements that are both workable and efficient in their application. In the undertaking to simplify the law, it is critical that we not lose sight of the consumer and that we ensure that any new regulatory system retain strong protections for mortgage shoppers and stimulate consumer choice and market competition. We can achieve all these objectives simultaneously, but only through a very careful balancing of interests. As proposed, the rule did not achieve this balance. Nor do we believe that HUD has

[1] MBA is the premier trade association representing the real estate finance industry. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership prospects through increased affordability, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate professionals through a wide range of educational programs and technical publications.

come up with the solutions necessary to address the panoply of implications that emerged from the far-reaching proposed rules.

For this reason, MBA reiterates its request to HUD to re-propose this rule. MBA believes that re-proposing the rule is the only step that will allow policy-makers carefully to balance all interests and enhance the quality of the final regulations. Further consideration of the rule's contents will also allow us to ensure that these amendments are not needlessly challenged by endless litigation.

MBA's Commitment

Mr. Chairman, I'll begin by reminding the Committee that the United States has the world's most efficient and inexpensive system for delivering mortgage capital to consumers. MBA has always believed, however, that we can improve on this system, and that we can create a disclosure process with better and more reliable consumer information that enables borrowers to truly shop for the best mortgage. For several years, our Association has been the most ardent and consistent proponent of reforming the mortgage process and simplifying consumer disclosures. Our efforts extend all the way back to 1997, when we led the industry in assembling groups of experts from all segments of the industry through the "Mortgage Reform Working Group," and engaged in crafting simplification plans acceptable to all interested parties. Even when the Mortgage Reform Working Group failed to reach consensus on certain difficult points, MBA persisted in its efforts to construct an improved disclosure system, and continued to advocate for realistic legislative reforms through meetings and negotiations with federal government representatives and consumer groups interested in mortgage simplification.

Our tireless efforts in this arena demonstrate our sincere commitment to the goal of "simplification." Our current appeal to HUD to re-propose rule is based on this commitment and on our deep understanding of the complexities and pitfalls of this endeavor. MBA's unwavering dedication to achieving meaningful mortgage reform has

strengthened our resolve to ensure that the final outcome is a clear step forward in a process that affects the opportunity for all Americans to become homeowners.

HUD's Reform Regulation

Consistent with our track record as advocates for reform, MBA voiced support for HUD Secretary Martinez's initiative to reform RESPA in July 2002. MBA welcomed the proposal as the initiation of a process that would re-engage all interested industry and consumer groups to discuss, in earnest, the modernization of the outdated RESPA rules. In preparing for those comments, MBA took unprecedented steps in getting the message of the proposed rule out to its members, and expended countless hours in collecting member views and researching, analyzing and developing the critiques and recommendations contained in the comments.

In the end, MBA submitted 60 pages of recommendations and edits on HUD's proposal. It is important to realize that mortgage lenders are the entities that are most directly affected by the disclosure requirements and penalty provisions of the RESPA statute, and, therefore, bear the most direct impact in this rulemaking. The comments submitted by MBA are based entirely on the operational experiences of mortgage lenders and they convey very fundamental market realities that are based on everyday business operations.

Comments to HUD's Reform Proposal

We believe that there is a special urgency to ensuring that the MBA comments are effectively incorporated into any final rule. Put simply, our members *are* the mortgage lending process. If they say something won't work, then it won't work. Making the changes and rectifications recommended by MBA will ensure the very viability of the new regulatory system. Some of the more important concerns relating to the proposed rule, and expressed in MBA's October 2002 comments, are as follows—

Interest Rate Guarantee: HUD is proposing radically to alter how consumers shop for credit by pressing mortgage creditors to offer firm interest rate disclosures when consumers apply for a "packaged" loan. In our comments, we warn HUD that it is tremendously risky to offer consumers solid interest rate guarantees only three days after they apply for a loan, or to offer solid commitments on interest rate "indices" based on the unclear provisions set forth in the proposed rule. The unpredictable nature of interest rate fluctuations will impose significant market risks on lenders. This increased market risk will, in turn, increase costs in any guarantee offered by lenders—costs that will be passed on to consumers through considerable premiums on the interest quote offered. Alternatively, lenders may decide to quote consumers a higher interest rate to ensure that they can "cover" any unexpected market shifts. Under either scenario, the result is increased costs for consumers. This is utterly contrary to the very purpose of the provision.

In its comments, MBA also highlighted that creating legally-binding 30-day offers, *en masse*, to the general public leads to such massive risks for lenders and the mortgage industry that public policy would dictate against engaging in such activities. Simply stated, without more clarity and specification, it is entirely unrealistic to expect lenders to bear the uncontrollable risks of interest rate fluctuations in the market.[2]

Changes to the Good Faith Estimate: HUD's sweeping changes to the current good faith estimate (GFE) system will bring about significant operational risks and will greatly increase legal uncertainties for lenders. Specifically, the proposed imposition of strict "tolerance levels" on lenders for settlement fees is risky and fundamentally unfair, as lenders neither set nor control the fees charged by third-party settlement servicers. Moreover, many fees are subject to variances based on consumer needs and preferences; such needs and preferences are not known or understood three days after application.

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[2] In January 2003, MBA crafted a report containing recommendations to HUD on how to construct a system of consumer protections against improper manipulation of interest rate quotes by lenders. This report—entitled "RESPA Interest Rate Working Group Report"—contains very specific elements that MBA believes *must* be part of any interest rate provision in a final rule.

We note that by amending the upfront GFE disclosures, HUD is imposing changes to every other major disclosure required by RESPA. The regulations mandate that the GFE form list items in a way that corresponds to the listings of the HUD-1 Settlement Statement. Since the proposed rule completely reconfigures the GFE form, this means that the HUD-1 form may require alterations and edits. And, since HUD is proposing to alter the order and the rules that attach to the GFE disclosures, then HUD will also have to re-write RESPA's "Special Information Booklet" to ensure that consumers remain well informed of the new rules and disclosures that apply to mortgage transactions.

There is no doubt that the proposed RESPA reform regulations will force every single lender and broker in America, in one single swoop, to completely revamp their entire upfront disclosure systems—lock, stock, and barrel.

Changes to Definition of "Application": HUD proposes to replace the definition of the term "Application" under existing regulations with an ambiguous new standard. This definitional change is extremely significant because the full panoply of statutory requirements imposed under RESPA's strictures (and indeed the requirements of other statutes, such as the Truth in Lending Act and Home Mortgage Disclosure Act) are triggered by the technical details of whether a consumer's inquiry rises to the level of an "application," as defined by the RESPA regulations. Replacing the time-tested definition of "application" with an unclear standard will considerably disrupt mortgage lending operations nationwide.

Conflicts With State Laws: The implementation of the revised GFE form and the Guaranteed Mortgage Package (GMP), as proposed, will result in violations of—or at least conflicts with—the laws that currently exist in a *majority* of states. In many cases, there could be multiple conflicts within one single state. Without some relief from state restrictions, it will be impossible to achieve a uniform implementation of the GMP provisions of the proposed rule. We note that the patchwork of state provisions works

against the general thrust of capital market efficiency, which results in lower costs in the mortgage market.

Conflicts With Federal Laws: There are various elements in the proposed rule that intersect with elements covered by other federal laws, particularly the Truth in Lending Act (TILA). In some instances, HUD explicitly imports provisions of TILA into the new requirements advanced by the proposed rule. This overlapping of requirements is extremely confusing, and sometimes poses irreconcilable differences with HUD's proposed regulations. The confusion created by the overlay of the new rules on the veritable maze of existing rules and requirements that apply to mortgage lending operations will prevent scores of lenders from fully engaging in "packaging" activities. Moreover, the repercussions that flow from running afoul of any of these regulations, and indeed, the risks to reputation that loom in instances of even minor violations, will act to severely restrict the number of entities willing to participate in "packaging," and will therefore diminish the vigorous competitive effects of this regulatory experiment.

Concerns Stemming From Elements Outside the Proposed Rule

MBA members have even more profound concerns with a crucial issue that arises outside of the proposed rule's written provisions. In the Economic Analysis to the proposed rule, HUD states that "lenders, real estate brokers, appraisers, settlement agents, or literally anyone else may form the package and may be eligible for the safe harbor for which it qualifies." The Economic Analysis goes on to state that "[o]riginators could develop their own packages or specialized firms could develop packages or components of packages, which they would then sell to the originator." Then, in a statement that has no explicit support from the language of the proposed rule itself, the Economic Analysis further explains that "sub-packages may be formed and sold to full-fledged packagers" and that "[t]his is permissible since the sub-packager is within the package."

The broad language of the Economic Analysis creates alarming "loop-holes" that allow unscrupulous players to use the protections of the GMP to collect improper "kick-backs" and referral fees. There are three possibilities for abuse. First, if entities are allowed to "sub-package," consumers could be "pre-sold" on a package that contains either inferior services or above-market profit margins. In this scenario, the lender receiving the referral would be obligated to accept the services of the "sub-package" and refrain from making any competitive counter-offers for fear of losing future business referrals. Second, the "sub-packager," having already captured a customer, could improperly steer that customer to the lender that promises to pay the highest referral fee. If the lender uses the services, the "steering" sub-packager would fall within the exemption of the full "package," and the otherwise illegal referral fee would be legal. Third, a dishonest party that refers business to a lender or other service provider could blatantly demand referral payments from the lender and then "cleanse" that payment by performing sham services (or no services at all), allegedly within the rubric of the "package." Under this scenario, the referral payment would be legalized, as fees paid within the package are exempt, and the dishonest player could penetrate the "package" without culpability because there is no requirement regarding minimal levels of services that must be performed to be part of that "package."

We note here that MBA does not disagree with the "safe harbor" approach taken by HUD in its proposal. We are concerned, however, that HUD must delineate that "safe harbor" more carefully, or risk a return to pre-1974 conditions where rampant "kick-backs" and referral fees served unnaturally, and needlessly, to inflate settlement costs. Unless carefully crafted, the "sub packaging" provisions described by HUD could lead to the disguising of referral fee payments, "sham" arrangements, and a host of other market distortions. To this end, HUD must address the "sub-packaging" descriptions and other ambiguous language contained in the Economic Analysis, as this language raises the specter of legalizing naked referral fee payments without any countervailing benefits for consumers.

Concerns Regarding Judicial Challenges

This rulemaking has a number of statutory problems that are not easily resolved, as they stem from fundamental questions about HUD's basic authority to administer the RESPA statute.

First, there is substantial agreement within the legal community that HUD lacks the requisite authority to enact a system of tolerances under RESPA's GFE provisions. Legislative history clarifies that the GFE disclosure is meant to provide consumers with an early set of cost disclosures that the consumer can use as a general guide to engage in further shopping and comparisons of individual settlement service providers. Congress never intended that the GFE form be regarded as a solid pledge or assurance from the lender to the consumer regarding third party settlement fees. Nor did Congress intend that RESPA's GFE provisions be used as a legal tool to *rescind* the mortgage transaction in instances where the estimated fees turn out to be inaccurate. To the contrary, by explicit Congressional design, nothing in RESPA's GFE provisions mandates precise accuracy in the initial three-day disclosures, particularly for those fees under the control of third parties. We believe, therefore, that by proposing strict cost tolerances and by proposing rescission-type remedies for consumers when such tolerances are unmet, HUD is inventing and implanting consumer protection provisions that Congress specifically intended to exclude. In short, HUD is clearly overstepping its regulatory authority.

HUD further overextends its authority by proposing to prohibit lenders from compensating mortgage brokers for services that they legitimately perform in the transaction. In the proposed rule, HUD proposes the elimination of so-called "yield spread premium" payments, replacing it with a requirement that any payment due from lenders to mortgage brokers (for services performed in the transaction) must be characterized as fees credited from the lender to the consumer and tendered to the broker. This proposed amendment is not only incredibly troublesome for purposes of brokered transactions, but it is also directly contrary to the plain statutory language

contained in Section 8(c) of RESPA that specifically allows for the payment of services actually performed and goods or facilities actually rendered.

Finally, MBA believes that serious statutory questions would surface should HUD decide to finalize a rule containing "dual packaging" options. The statutory doubts arise under two independent bases. First, as compared with the "single package" system proposed by HUD, the "dual packaging" system gives rise to unique competitive dynamics and completely different economic burdens on affected members. In addition, "dual packaging" is a system that would require a distinct set of regulatory requirements as it imposes new disclosure duties on entities that have no burdens under the existing regulatory regime. The novelty of this proposal, and the fact that HUD's thinking has evolved beyond the original proposed rule, mandates that HUD re-issue another proposed rule, and that it prepare another economic analysis, that fully explain how it seeks to structure this new option. Second, and perhaps more fundamentally, since the RESPA statute assigns the pertinent disclosure responsibilities to "lenders," it is uncertain that HUD even possesses the necessary authority to shift and re-define the statute's disclosure rules on entities other than lenders.

This brief and summarized explication should suffice to give the Department additional grounds for pause. There are serious legal problems and foundational doubts inherent in the reform proposals as proposed. We fear that, without deeper analysis and wider consultation regarding the new provisions, HUD's reform rules will be encumbered by multiple legal proceedings.

Conclusions

Mortgage reform promises to bring significant benefits to consumers and the real estate finance industry alike. However, if not done correctly, it should not be done at all, as it will "deform" rather than "reform" the mortgage process. The nature and extent of the changes proposed by HUD require that all segments of the industry and consumers be

granted a full opportunity to review HUD's latest reform plans through the issuance of another proposed rule.

No one will benefit by having a final rule that is unworkable and counter to efficient lending operations. No one benefits by the enactment of a law that hampers robust competition in the marketplace. No one will win by finalizing a rule containing overly broad exemptions that inadvertently strip consumer protections and allow for the masking of blatant referral fee payments. No one will gain from the enactment of legally ambiguous provisions that can be easily challenged and litigated into uncertain interpretive results. In the end, we will all lose by prematurely finalizing a rule that will alter, in entirely uncertain ways, the operations of an industry that has been, and continues to be, the strongest pillar sustaining our nation's economic health.

Mr. Chairman, the stakes are simply too high. We urge that this Committee join our call to convince HUD to re-propose the RESPA reform rules so that we can ensure a robust discussion and meaningful dialogue that allow for the maximum input from consumers and industry. We ask that you help us in convincing HUD that this rulemaking must be done right if it is to be done at all.

STATEMENT OF JOHN C. WEICHER
ASSISTANT SECRETARY FOR HOUSING
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

Chairman Manzullo, Ranking Member Velazquez, Distinguished Members of the Committee:

Thank you for the opportunity to testify this morning before the Committee on Small Business of the United States House of Representatives regarding the procedures that were used by the Department of Housing and Urban Development to develop the Real Estate Settlement Procedures Act reform rule.

I want to start by stating that we at HUD have been working to comply with all applicable law, and with the widest public involvement, to carry out our responsibility to lower settlement costs to consumers under RESPA in this rulemaking.

As a key part of this process, we have worked diligently to satisfy all applicable legal requirements and procedures, including those that require analysis of the regulatory burden these changes may bring to small businesses. Acting Secretary Jackson and the Department are committed to full compliance in agency rulemaking. That commitment applies to our rulemaking in general and to our RESPA rulemaking, in particular.

As former Secretary Martinez testified last March, HUD regards RESPA reform and the involvement of small businesses as necessarily complementary; for RESPA reform to work, small businesses must continue to serve their key role in an efficient and effective settlement process. Small businesses perform important functions in real estate settlement transactions because these transactions are by their nature local. Real property is, of course, local, and a local realtor, appraiser, settlement agent and mortgage broker or mortgage banker is ordinarily required to complete the transaction. Because of the importance of small businesses in making mortgage credit available to increase homeownership, HUD as much as anyone is sensitive to the need to assure that small entities are able to continue to play their key role in the settlement process. At the same time, we also need to make sure that we are carrying out the statute's purpose as we comply with all other legal requirements.

HOMEOWNERSHIP OBJECTIVE

The President has set a national goal of increasing homeownership and creating 5.5 million new minority homeowners by the end of this decade. Because RESPA reform holds the promise of lower costs, this effort has become a key part of the Administration's homeownership effort. The mortgage finance process and the costs of a down payment including closing costs are major impediments to homeownership. Every day, Americans choose not to purchase homes because the process of buying and financing a home is unnecessarily daunting and complicated. Others stay away because they don't have the cash for a down payment —a large part of which are settlement costs. For those that do embark on the mortgage process, too many families find the process far too confusing and too costly. We regard this rulemaking as a major Administration initiative to better protect consumers and increase homeownership by making the process of obtaining a home mortgage simpler and clearer for American families.

RESPA

RESPA is a consumer protection statute that was enacted in 1974 to lower real estate settlement costs by assuring appropriate disclosures of these costs to

consumers including at the time of mortgage application and at the time of settlement, and by prohibiting kickbacks, referral fees, splits of fees, and unearned fees in mortgage transactions. The law explicitly permits HUD to exempt particular classes of transactions from these prohibitions to benefit consumers.

Since 1974, the industry has changed dramatically and technology has brought new efficiencies to lower costs, but the RESPA statute and rules have remained essentially static. In 1998, as a result of direction from Congress, HUD and the Federal Reserve offered a variety of proposals to simplify and improve disclosures under RESPA. Shortly after the Bush Administration took office in 2001, a major RESPA issue confronted policy makers: the legality of yield spread premiums, payments to mortgage brokers from lenders based on the interest rates of individual loans. This issue came to a head following an Eleventh Circuit U.S. Court of Appeals decision that called into question the legality of these payments under RESPA. Because the decision potentially jeopardized the legitimate use of these payments to lower upfront settlement costs to consumers, HUD issued a clarification to an earlier policy statement on this issue. RESPA Policy Statement 2001-1 reiterated HUD's view that as long as the broker's compensation is for goods, facilities, or services, and the total compensation is reasonable, yield spread premiums to the mortgage broker are legal under RESPA.

In the process of issuing the policy statement, it once again became evident to the Department that there were serious problems in the real estate settlement process. Therefore, in the policy statement, the Department committed itself to simplifying and improving settlement cost disclosures and the settlement process for all involved.

PROPOSED RULE

In July 2002, almost eighteen months ago, HUD published its proposed RESPA reform rule to simplify and improve disclosures provided at the time of mortgage application, in order to facilitate shopping by borrowers and to increase competition to lower settlement costs. HUD's proposal was in important respects informed by the joint HUD - Federal Reserve 1998 report as well earlier HUD rulemakings on mortgage broker fees. Most importantly, the proposed rule was the culmination of years of review of these issues as well as consultation with a wide variety of industry, consumer and government representatives.

ECONOMIC AND SMALL BUSINESS ANALYSES

At the time the proposed rule was issued, the Department issued an economic analysis and an initial regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). These analyses addressed the market impacts of RESPA reform, and the compliance and regulatory consequences of the proposed rule, including the consequences as they related to small business.

HUD recognized the significance of its proposed rule and the desirability of full public discussion. Therefore, in order to maximize public comment on its proposal, HUD extended the public comment period for the rule, the economic analysis and the initial regulatory flexibility analysis from the usual 60 days to 90 days. HUD also asked for comment on 30 specific questions, to ensure that all major issues were fully considered.

By the end of the comment period, on October 29, 2002, HUD had received a record number of comments, nearly 43,000. Of these, about 400 were substantive responses, detailed letters from a broad range of industry, consumer and government representatives. These 400 responses covered all aspects of the rule and addressed all of the 30 questions raised by HUD in the proposed rule. The remainder were short letters, in many cases form letters, expressing opposition to the rule but not offering alternatives or suggestions for improvement.

During the period of almost 18 months since the rule was proposed and almost 15 months since the comment period ended, the Department has met with interested groups. We have held more than 60 such meetings with interested groups and parties as well as maintaining continued contact with interested government agencies, and we believe that we have met with every group that has expressed a desire to meet with us. These meetings have certainly included representatives of affected small businesses. We have heard the views of these groups concerning the proposal's impact on them, and their suggestions for revisions. During this time, we also testified before and benefited from the views of Congress including this Committee as well as the House Committee on Financial Services and the Senate Banking, Housing and Urban Affairs Committee.

REVISIONS TO THE IRFA

The comments that we have received and the meetings that we have held have included discussions of the Initial Regulatory Flexibility Analysis (IRFA). In developing the final regulatory flexibility analysis we considered these views and gave careful attention to the guidance of the Office of Advocacy of the U.S. Small Business Administration. This guidance helped us consider how best to minimize burdens, while keeping in mind the objectives of our reform effort.

FINAL RULE UNDER REVIEW

On December 16, 2003, HUD submitted a final rule, economic analysis and final regulatory flexibility analysis to the Office of Management and Budget (OMB) for Administration review. Because the rule has been formally submitted to OMB and is still under review there, I cannot comment on the specifics of any part of the rule or the accompanying analyses. Discussing the rule or these analyses while the rule is under OMB review would undermine the deliberative process and interfere with the ability of the Executive Branch to make decisions. Nonetheless, I can say that in my experience at HUD over four administrations, there are nearly always changes between a proposed rule and a final rule, based on the comments received. Indeed, making changes effectuates the purpose of public comment.

I can testify that we have worked diligently to follow applicable procedural requirements to assure that the final rule satisfies RESPA's intent, and that the process itself has satisfied applicable small business related requirements as well as the other procedural requirements of the Administrative Procedures Act. I can also assure you that there has not been a rush to promulgate this regulation, but rather a deliberate and careful effort to ensure that the letter and spirit of RESPA, the Administrative Procedures Act and the Regulatory Flexibility Act of 1996, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, are fully satisfied.

CONCLUSION

We believe that the Department has developed a comprehensive, balanced rule. In developing it we carefully considered all comments offered by the public, including the comments offered by settlement service providers such as title agents, brokers, appraisers, credit bureaus, consumers, and others that provide the basis for changes in the final rule.

I thank the Committee for the opportunity to meet with you today. Your continued interest in the Department's efforts to reform RESPA is evidence of the importance of the issues we are addressing, and I can assure you that we recognize their importance.

stewart

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January 5, 2004

Members of the U.S. House of Representatives
Small Business Committee

Re: RESPA REGULATIONS HEARING

Former Secretary Martinez developed a proposed a HUD RESPA rule based on flawed advice, flawed information and flawed assumptions. Despite Congressional requests, Alfonzo Jackson, the proposed new Secretary of HUD, forwarded a final RESPA rule during the Congressional recess to OMB, resulting in this January 6th Small Business Committee RESPA Regulations Hearing.

The theory is that such rule will reduce closing costs by $700, resulting in some 250,000 additional home sales. We all wish for and are working on achieving such results, but the proposed RESPA rule actually would NOT accomplish that.

Realtor costs are about 6% of the house price; lender costs are 3%; and related settlement services are about 1%. Advance consumer disclosures required by RESPA are to be made by the LENDER to reflect accurate real estate commissions, lender costs and settlement services, such as title insurance. It is the LENDER that is obligated to make the disclosures, but often does not disclose all of its OWN LENDER FEES resulting in surprises at the closing table. Further, more often than NOT, the disclosure is NOT timely made to or received by the borrower.

The title industry has been working hard to do its part. Due to efficiencies created by the title insurance industry, in 2002 alone, Texas consumers paid $268 less per transaction on an inflation-adjusted basis than they did in 1989. 2002 savings to Texas title insurance consumers amounted to $652 million on an inflation adjusted basis in one year over what they would have paid using 1989 rates. That is just for title insurance premiums alone.

How has the title insurance industry accomplished this? Through technological advances created by the title insurance industry. For the last five years title insurers have been assimilating other settlement service providers – such as appraisal services, tax services and survey services – and lowering these costs to the consumer as well.

The title industry has now spent over a hundred million dollars to build and test software delivery systems which are being deployed to allow packaging and bundling of settlement services and consumer access so that consumers can determine for themselves what is best. HUD's current proposed regulations will only freeze these developments before the marketplace can receive the full benefits of these new delivery systems. It is better that consumers obtain access to these systems, informing them of the necessary services to close their loan and buy their home. RESPA mandated disclosures which have not been reaching the consumer in a timely way can now be made available online. Documents and products can be viewed online as well including the pricing of each, and all before the closing and will be available 24/7. The

availability of this information and consumer's access thereto is what will ultimately bring closing costs to the consumer down.

Further, these title insurance industry developed systems enable the title industry to work with lenders online so that the lender can create its own LENDER PACKAGE, and making them also viewable by the lender and the consumer. The title industry is working with Lenders to help them provide their own guaranteed price LENDER PACKAGES separate and apart from the settlement services package. The marketplace is working!

What is needed is for lenders to package their own lender services and compete head-to-head with other lenders to lower consumer costs in the LENDER PACKAGE. Lenders can offer guaranteed pricing for their LENDER PACKAGES.

What IS also needed is for the settlement services industry to offer a separate SETTLEMENT SERVICE package in competition with other settlement service providers. BOTH LENDER PACKAGES AND SETTLEMENT SERVICE PACKAGES are in the process of rolling out now with NO government intervention. No RESPA rule changes have been necessary. All LEGAL and all NOW.

What is WRONG with the HUD RESPA PROPOSED RULE is its attempt at repealing or exempting LENDERS from a federal criminal statute applicable to them (Section 8 of the Real Estate Settlement and Procedures Act – RESPA). Section 8 of RESPA was designed by Congress to protect consumers by prohibiting KICKBACKS and REBATES! If the LOAN must be a part of the package to be competitive, this would allow ONLY the lender to package because ONLY lenders would be making the loan. Others would be forced out of the marketplace. These are the very entities that have been bringing competition and driving change to the marketplace. An oligarchic marketplace with much competition REMOVED would actually be created by such a new proposed RESPA rule by actually REDUCING rather than creating competition. Under HUD's proposal, Large lenders would be allowed to earn illegal kickbacks and rebates– the very thing Congress enacted RESPA to eliminate! Such a proposal achieves the opposite effect of what has been hypothecated by HUD and told to you and others in your Administration.

The Federal Reserve, FTC and SBA have all commented in opposition to the proposed RESPA rule. The NAR, MBA and ALTA, representing millions of voters, are in opposition. Eight consumer groups are opposed, and there is NO economic evidence of any savings to the consumer from such proposed rule with a Section 8 exemption. Any such attempts at implementing such proposed rule will be met by legal challenges as HUD has NO AUTHORITY to make rules to override RESPA legislation passed by the Congress. HUD's duty is to implement and not override the law.

In conclusion, what has been and is happening in the marketplace will REDUCE COSTS to the consumer, and increase the numbers of people who can afford housing. The HUD proposed RESPA rule will have the OPPOSITE effect. It is better to have the developing system of two separate packages: a LENDER PACKAGE of lender services at a guaranteed price; and a separate SETTLEMENT SERVICES PACKAGE. Such does NOT flaunt or override RESPA and will increase rather than reduce competition. Without promoting an exemption from Section 8 of RESPA, HUD should be proud of bringing the issue of reducing closing costs to the forefront and opening debate and soliciting over 45,000 comments. HUD's initiative is already

encouraging packaging to lower costs to the consumer through increased competition, allowing Lenders and Settlement service providers to each compete in their respective arenas by assembling distinctly separate packages of services offered to the consumer. HUD's activities have already changed the system. HUD would get NO lawsuits and basically will have played a major role in encouraging the direction the marketplace is already heading. The initiative introduced by Secretary Martinez surely helped focus everyone in housing finance on saving the consumer money through packaging.

HUD's proposed RESPA rule would create immediate chaos in the real estate financial markets. Such chaos would hurt the very important real estate driven economic recovery that is currently underway. HUD should allow the real estate market to assimilate these changes over the next biennium and assess the results and report back to Congress on the implementation of packaging in both the lender and settlement services industry. No Congressional changes to RESPA would be required at this time.

I've got a lot more details I could discuss, but I think this expresses the jist of WHY NOT to proceed forward with the HUD rule proposing an exemption from Section 8 of RESPA in an attempt to override the Real Estate Settlement and Procedures Act. Ultimately, such would create unintended anti-consumer repercussions.

The Small Business Committee should urge OMB to return the proposed RESPA regulation back to HUD for no further action at this time.

Sincerely,

Malcolm S. Morris

MSM:jdc

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

AUG - 6 2002

The Honorable John Weicher
Commissioner of the Department of Housing
and Urban Development
451 7th Street, S.W.
Room 9100
Washington, DC 20410

Dear Mr. Weicher:

On July 3, 2002, the Office of Management and Budget (OMB) completed review of a Department of Housing and Urban Development (HUD) proposed rule titled "RESPA—Improving the Process for Obtaining Mortgages" under Executive Order No. 12866. The rule was published on July 29, 2002. In order to increase consumer choice and consumer protections, the rule proposes three significant changes to the settlement procedures covered by RESPA, including (1) changes in the way in which lender payments to brokers are recorded and reported to consumers in order to reduce abuses, especially in the use of yield spread premiums to reduce settlement costs; (2) improvements in the Good Faith Estimate (GFE) settlement cost disclosure to make it more accurate, understandable, and user friendly for consumers shopping for mortgage/settlement providers; and (3) removal of regulatory barriers and provision of a safe harbor for "guaranteed" packages of settlement services, which will reduce costs and facilitate comparison shopping.

OMB considers this to be a very promising rulemaking. The proposed rule would significantly strengthen consumer protection and promote consumer choice, thereby creating market changes that ultimately benefit the borrower. Given the objectives of this rulemaking, it is important that HUD continues its work to improve and simplify the proposed forms. In addition, HUD should further strengthen the economic and regulatory flexibility analyses. Specifically:

- Proposed forms: We appreciate HUD's expressed willingness to collaborate with other agencies, such as FTC, who have expressed an interest in improving the Good Faith Estimate (GFE) and the Guaranteed Mortgage Package Agreement (GMPA) forms by conducting focus group testing on the forms prior to the issuance of a final rule. This testing should focus on the understandability of the forms, especially as it relates to the borrower's understanding of broker compensation. HUD will also conduct consumer testing of the HUD-1 to help ensure that borrowers are able to crosswalk easily between the proposed GFE and

the HUD-1, and between the proposed GMPA and the HUD-1. This will allow borrowers to be able to identify any deviations between the proposed costs on the GFE (or guaranteed costs on the GMPA) and the final charges at settlement.

- Economic analysis: HUD conducted an extensive analysis of the economic impacts of the proposal to inform policy decisions at the proposed rule stage. HUD should continue to make improvements to the analysis in order to inform final decisions. In doing so, HUD should analyze the various options under consideration and base its analysis on the most reasonable assumptions and data that meet HUD's new information quality standards, explaining the basis for several key assumptions rather than presenting them as illustrative statements. Furthermore, we would urge the Department to analyze more than one option so that HUD policy officials will be better able to select the option that maximizes net benefits as required by E.O. 12866. My staff would be happy to work with you on the final economic analysis.

- Regulatory flexibility analysis: We recognize that the Economic Impact Analysis includes a substantial discussion of the impact on small business, and we encourage you to refine and build upon that analysis as we move to a final rule.

We have appreciated HUD's strong efforts to develop the proposal, and we look forward to HUD's strong collaboration with other interested agencies in finalizing the proposal. With these changes, the proposed RESPA revisions will offer the best possible choices to consumers, and allow them to make better decisions, thereby lowering settlement costs significantly and making the process of buying a home easier. OMB supports HUD's proposal of this rule, and we look forward to further enhancements in both the analysis and substance of the rule that may occur in response to public comment and interagency review.

Sincerely,

John D. Graham, Ph.D.
Administrator